

HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                     )  
  )  
Application for                         )  
Certification for the                 ) Docket No. 99-AFC-7  
PASTORIA ENERGY FACILITY         )  
(ENRON NORTH AMERICA CORP.)     )  
  )

ROOM A  
BAKERSFIELD TAXPAYER SERVICE CENTER  
1800 30TH STREET  
BAKERSFIELD, CALIFORNIA

TUESDAY, SEPTEMBER 19, 2000

9:00 A.M.

Reported by:  
Debi Baker  
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Presiding Member

Michal Moore, Associate Member

STAFF PRESENT

Susan Gefter, Hearing Officer

Melissa Jones, Advisor to Commissioner Moore

Dick Ratliff, Staff Counsel

Kae C. Lewis, Project Manager

Amanda Stennick

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Lorraine White

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Denise Clendening

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ALSO PRESENT

Dave Rickels, Planning Chief, Special Projects  
Pauline Gallo, Senior Planner, Zoning Unit  
County of Kern

Susan Jones  
Fish and Wildlife Service

Dennis G. Fox  
Soil and Water Conservation Society  
California Native Grass Association

Scott Hamilton, Director  
West Side Mutual Water Company  
Kern Water Bank Authority

ALSO PRESENT

Gary Butcher  
Kern County Water Agency

Richard Karrs, Air Quality Engineer  
Thomas Goff, Permit Services Manager  
San Joaquin Valley Unified Air Pollution Control  
District

Phil Castle, Fire Marshal  
Kern County Fire Department

Video - KGET Channel 17

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1 P R O C E E D I N G S

2 9:00 a.m.

3 PRESIDING MEMBER LAURIE: Ladies and  
4 gentlemen, good morning. My name is Robert  
5 Laurie, Commissioner of the California Energy  
6 Commission and Presiding Member of the Pastoria  
7 Energy Facility Committee.

8 To my left is Ms. Susan Gefter, the  
9 Hearing Officer assigned to the case. And Ms.  
10 Gefter will administer today's proceedings.

11 To Ms. Gefter's left is my colleague on  
12 the Committee, Dr. Michal Moore. And to Dr.  
13 Moore's left is Melissa Jones, Dr. Moore's  
14 Advisor.

15 MS. MENDONCA: We're having trouble  
16 hearing in the back of the room.

17 PRESIDING MEMBER LAURIE: Okay, we will  
18 speak more loudly.

19 HEARING OFFICER GEFTER: We'll speak  
20 loudly.

21 PRESIDING MEMBER LAURIE: We will  
22 amplify. If those in the back of the room need to  
23 hear and you can't, raise your hand and we will do  
24 something about it.

25 We have a number of witnesses to be

1 heard from today. Just a reminder that today's  
2 proceedings are being recorded. At anytime if the  
3 recorder is not picking up your testimony we will  
4 stop the proceedings until repairs can be made.

5 At this time I'd like to ask Dr. Moore  
6 if he has any opening comments this morning?

7 COMMISSIONER MOORE: No, thank you.

8 PRESIDING MEMBER LAURIE: Ms. Gefter.

9 HEARING OFFICER GEFTER: I'd like the  
10 parties to introduce themselves for the record.  
11 Applicant, please.

12 MR. THOMPSON: Thank you. My name is  
13 Allan Thompson; I'm counsel for Enron on the PEF  
14 application. To my right is Mr. Sam Wehn, who is  
15 Enron North America Project Counsel for the  
16 Pastoria Energy Project.

17 We have, to his right, Jennifer Scholl,  
18 who is lead environmental with URS Corp. And a  
19 number of witnesses who will be on the stand  
20 today.

21 HEARING OFFICER GEFTER: Thank you.  
22 Staff.

23 MR. RATLIFF: I'm Dick Ratliff, counsel  
24 for staff. With me is Amanda Stennick, our land  
25 use witness, and Kae Lewis, the project manager.

1                   PRESIDING MEMBER LAURIE: Just a note.

2                   You may have noted that we are speaking quickly  
3                   this morning. Aside from the fact that we've all  
4                   had -- some of us have had our morning caffeine,  
5                   we will finish today's proceedings by 4:30. And  
6                   we have a lot of work to do. And so the parties  
7                   are instructed not to dawdle. If the Committee  
8                   has a need to impose itself because we think we're  
9                   going off track, then we will get you on track.  
10                  We have a lot to accomplish, so that's a necessity  
11                  to really concentrate.

12                  Ms. Gefter.

13                  HEARING OFFICER GEFTER: Would the  
14                  intervenors introduce themselves.

15                  DR. UNGER: Arthur Unger, Kern-Kaweah  
16                  Chapter, Sierra Club.

17                  MS. GRIFFIN: Mary Griffin, Kern Audubon  
18                  Society.

19                  HEARING OFFICER GEFTER: Thank you.

20                  MS. MENDONCA: I'm the Public Adviser,  
21                  Roberta Mendonca. I'm here from the Energy  
22                  Commission to assist the public in participation  
23                  today.

24                  HEARING OFFICER GEFTER: Thank you. We  
25                  understand there are a number of agency

1       representatives in the back of the room. And as  
2       it becomes your turn to come forward and give us  
3       your testimony we'll ask you to introduce yourself  
4       at that time because we want to proceed.

5               We held open the topic of transmission  
6       system engineering yesterday to take the testimony  
7       of the applicant's witness on gas supply. We'd  
8       ask the applicant to begin with that witness at  
9       this time.

10              MR. THOMPSON: Thank you very much.  
11       Applicant would like to call Ms. Stephanie Miller.  
12       Would you stand and raise your right hand to be  
13       sworn.  
14       Whereupon,

15                       STEPHANIE MILLER  
16       was called as a witness herein and after first  
17       being duly sworn, was examined and testified as  
18       follows:

19                       DIRECT EXAMINATION

20       BY MR. THOMPSON:

21              Q       Would you please state your name for the  
22       record.

23              A       Stephanie Miller.

24              Q       And by whom are you employed and in what  
25       capacity?

1           A     I'm employed by Enron North America. I  
2     am a Regional Vice President of North American  
3     Transportation and Storage.

4           Q     And am I correct that you submitted  
5     prepared testimony which is now part of exhibit  
6     38, and attached to that is a map entitled, west  
7     coast pipeline grid?

8           A     Yes.

9           Q     Would you please very briefly summarize  
10    your testimony?

11          A     The purpose of my testimony is to  
12    demonstrate that by connecting the Pastoria  
13    project to the Kern/Mojave pipeline system the  
14    project will have access to all major supply bases  
15    in the western United States.

16                We also are here to affirm the  
17    availability of gas supply, and that there will be  
18    adequate supplies to serve the project over its  
19    lifetime.

20                We also provided independent information  
21    to confirm the range of estimates that the CEC  
22    provided in their 1999 Fuel Report.

23                And that's it.

24          Q     Thank you very much.

25                MR. THOMPSON: Ms. Miller is tendered

1 for cross-examination.

2 HEARING OFFICER GEFTER: Does staff have  
3 cross-examination?

4 MR. RATLIFF: No.

5 HEARING OFFICER GEFTER: Do either of  
6 the intervenors have cross-examination?

7 DR. UNGER: No.

8 MS. GRIFFIN: No.

9 HEARING OFFICER GEFTER: Thank you.  
10 Committee?

11 COMMISSIONER MOORE: I have a couple of  
12 questions.

13 EXAMINATION

14 BY COMMISSIONER MOORE:

15 Q Ms. Miller, I understand that you've  
16 traveled a long way to come and talk to us, and I  
17 appreciate that very much.

18 A My pleasure.

19 Q We extend our thanks. I'd like to have  
20 you discuss a little bit about the different major  
21 basins that you can draw upon, what you understand  
22 the reserves that are out there.

23 One of the things that has proven to be  
24 a little bit difficult with the '99 Fuels Report  
25 that you mentioned is that a number of assumptions

1       that were made in that report were based on  
2       drilling activity, availability of workers,  
3       capital investment, among other things, as well as  
4       some expected reserves in the Permian Basin and  
5       expected reserves in different parts of the  
6       Northwest, if I can call it that broadly.

7               So, in the sense that some of those  
8       estimates were optimistic, have proven to be  
9       optimistic already, can you elaborate a little bit  
10      on how you've adjusted for that, and then give us  
11      your outlook for future supplies, as well?

12             A     I will say we have relied upon  
13      information pulled together by third parties.  So  
14      what I have is information from EIA, the Energy --  
15      the government --

16             Q     Information Administration --

17             A     Yes, thank you, associated with the  
18      Department of Energy.  So I have information  
19      regarding production.  I don't have reserve  
20      information, but I have production trends that  
21      show from 1998 actuals through 2015 and 2020.

22               And if you'd like I can go into more  
23      detail regarding the different basins.  And I'll  
24      start by that in general the Pastoria project  
25      through the Mojave pipeline, from Mojave pipeline,



1 will access the Rocky Mountain Basin via Kern  
2 River.

3 And if you look on the map that I  
4 provided, you know, it shows the infrastructure,  
5 the pipeline that delivers from the Rocky Mountain  
6 Basin.

7 Via El Paso Natural Gas and Transwestern  
8 you have access to the San Juan Basin and the  
9 Permian Basins. And then Canadian Gas can access  
10 this pipeline via Northwest pipeline into Kern  
11 River, which again will deliver into the Pastoria  
12 project.

13 Q When you do your reports to company  
14 management, you put a confidence number of some  
15 kind on being able to get access to these  
16 pipelines, or to contracts on a long-term basis at  
17 a price that's reasonable.

18 And so I'd like to get your sense of the  
19 price forecast that you're using, if it's at all  
20 independent of the third parties that you  
21 mentioned.

22 A We don't prepare independent price  
23 forecasts, or at least my department does not. So  
24 I don't have direct knowledge of that information.

25 We rely upon internal assessments of

1 pricing, and that's what Enron does. Enron is the  
2 largest marketer of natural gas and electricity in  
3 North America.

4 And we have groups that manage what I'll  
5 call price risk/supply risk. And it is their job  
6 to keep forward curves of this information. So a  
7 lot of that resides with that part of Enron. And  
8 they manage that every day.

9 Q Is there a price where -- let me back  
10 up. We have a number of plants that are  
11 petitioning to get certificates of operation in  
12 front of the Energy Commission.

13 Many of them are clustered in this area.  
14 So if I put a circle around Bakersfield and went  
15 out 35 kilometers around, then I'd get a large  
16 number of plants, either in the queue today or  
17 forecast to be coming in the queue.

18 The likelihood is that they'll all try  
19 and make demands on Kern for their power supplies.  
20 And, of course, supply and demand being what it  
21 is, and the pipeline being the same diameter for  
22 the foreseeable future, that competition is likely  
23 to at least influence price to go up a bit.

24 I don't know how far up, but the  
25 likelihood is it won't go down in the intervening

1 period.

2 At what point do you think operations  
3 become constrained, or do they, with a change in  
4 price?

5 A The Kern River system, as I understand  
6 it right now, is utilized at a fairly high load  
7 factor. And there are plans for expansion, which  
8 would accommodate the increased amount of  
9 production that will be coming out of the Rocky  
10 Mountain Basin.

11 I mean right now I think the Rocky  
12 Mountain Basin is constrained from an access  
13 perspective. And that as capacity is added, there  
14 will be adequate production to serve it.

15 And I think Kern River may have been out  
16 here on several occasions or whatnot, and they  
17 have gone through and made public plans, I guess,  
18 for expansion on their system that would  
19 accommodate the increased production out of the  
20 Rockies.

21 So, I think, you know, short-term prices  
22 will stay high. But over the long term, as  
23 capacity is added and incremental production comes  
24 on, they will level off.

25 Q Well, let me try my question a slightly

1 different way, then. Let's suppose that they  
2 don't, and that I posit for argument a bump of 25  
3 percent in the base price.

4 Is a plant like this, in the world that  
5 you operate in, still competitive in that  
6 environment?

7 A I would say so because if the prices are  
8 going up in the Rockies, they'll be going up  
9 everywhere else.

10 Q So you'd expect that to simply be spread  
11 all around, and there would be no differential.  
12 It would be just as competitive as anyone else.

13 Are there quality differences that make  
14 a difference to you about the gas from any one of  
15 the basins?

16 A Not that I know of.

17 Q Will Enron enter long-term purchase  
18 contracts with gas producers for a single plant,  
19 or do they do it on a block basis?

20 A Enron will, again, Enron will enter into  
21 various types of arrangements. And I hesitate to  
22 go into a lot of the detail about that, because  
23 that's proprietary --

24 Q I don't want any --

25 A Okay.

1           Q    -- proprietary information.  In fact, I  
2   discourage you from putting anything like that on  
3   the record.

4                    But I guess in general what I'm after is  
5   to understand how one plant or one site gets  
6   protected in the long term through forward  
7   contracts or through some sort of hedging  
8   mechanism.

9           A    Well, to the extent Enron enters into  
10  firm agreements, that is the protection there.  
11  And --

12          Q    So they're doing it not on a plant-by-  
13  plant basis, but on a companywide basis.  They're  
14  going to enter a contract and the gas is then  
15  going to flow where it's needed at any given time?

16          A    Well, it could be constructed either  
17  way.

18          Q    You said that you rely on third-party  
19  information.  Do you ever challenge that and do an  
20  independent forecast or seek out any independent  
21  analysis?

22          A    Enron will contract for independent  
23  parties, at times, to provide that information.  
24  But, --

25          Q    And is there any of that independent

1 third-party information that is already part of  
2 this record, and I simply don't know?

3 A No. A lot of that information that we  
4 receive is confidential.

5 Q Are there any challenges to the  
6 information that we have that is on the record  
7 that we ought to be aware of, whether you reveal  
8 the detail of it or not? Is there anything that  
9 would indicate that what you saw in the '99 Fuels  
10 Report ought to be either examined again, or is in  
11 error?

12 A No. And I will say our review of the  
13 Fuels Report was specific to gas supply. And,  
14 again, you know, the information that we observe  
15 from third parties is consistent with what was in  
16 the CEC report.

17 And I think, if I recall, it falls  
18 within the median of these other analyses in terms  
19 of production estimates.

20 Q Okay.

21 COMMISSIONER MOORE: Thank you very  
22 much.

23 BY PRESIDING MEMBER LAURIE:

24 Q Ms. Miller, a question or two. I don't  
25 have Dr. Moore's expertise, so be patient with me

1 if you would.

2 Your testimony is that there is adequate  
3 gas supply to serve this project, is that correct?

4 A That's correct.

5 Q For purposes of discussion, let's assume  
6 that there is a project of similar nature that  
7 might be approved or come on line some months  
8 after this project could.

9 And let's suppose for purposes of  
10 discussion also that the demand for gas for that  
11 project is equivalent to the demand for gas for  
12 this project.

13 Would there be, in your opinion,  
14 sufficient supply in the system to serve the next  
15 project?

16 A Yes.

17 Q And you base that opinion on what?

18 A Well, just the amount of increased  
19 production, for example, coming out of the  
20 Rockies. Also depending on the level of demand,  
21 gas will flow through the interstate pipeline  
22 system in accordance with where the demand is.

23 So, to the extent you have incremental  
24 demand in California, gas will leave, maybe gas  
25 that had been destined to go to the mid continent

1 will turn around and flow to California.

2 So it's a function of demand. And for  
3 example, you know, Permian Basin gas used to flow  
4 to California quite consistently. And when demand  
5 fell off for awhile that gas turned around and  
6 went into the mid continent.

7 And we're seeing a shift again from mid  
8 continent Permian supplies back into California as  
9 a result of increased demand.

10 Q What is the lead time on running  
11 pipeline improvements so that if one wanted to,  
12 let's assume adequate supply in the ground, and  
13 you wanted to add capacity to your lines over a  
14 long distance.

15 How long does it take to do that from  
16 idea inception to turning the nozzles?

17 A Assuming the project would be adding,  
18 for example, compression only, that has a fairly  
19 quick turnaround. And going through the  
20 regulatory process it could take anywhere from  
21 probably a year to 18 months.

22 Q If you had to actually lay pipe in the  
23 ground?

24 A Maybe a little bit longer. A different  
25 level of approvals would be required.



1 BY COMMISSIONER MOORE:

2 Q And those different levels of approval  
3 are coming from the FERC?

4 A Um-hum.

5 Q And for compression, as well?

6 A Yes.

7 BY PRESIDING MEMBER LAURIE:

8 Q What kind of additions will be necessary  
9 to serve the long-term needs of this area for  
10 their natural gas supplies?

11 A I think right now if you look at total  
12 interstate pipeline capacity into the state, that  
13 number is almost 7 bcf a day. And I think in the  
14 demand forecast the number for California recently  
15 has been about 5.5 bcf a day, growing, I think,  
16 and topping out around 7.

17 So in total there's adequate capacity,  
18 but depending on where incremental production  
19 comes on, there may be a need for expansion,  
20 specifically the Rockies. And Kern River would  
21 need to expand to accommodate that.

22 I think El Paso Natural Gas, from a  
23 utilization standpoint, has some growing room.  
24 So, there could be an increase in utilization  
25 there before you'd have a need for expansion.

1 BY PRESIDING MEMBER LAURIE:

2 Q Do you know anything about recent  
3 indications of additional gas out of Alaska?

4 A Projections I have seen show that gas  
5 from Alaska and the MacKenzie Delta could come on  
6 line probably 2007. And significant  
7 infrastructure would be necessary to bring that  
8 gas to market.

9 Q And that market could include  
10 California?

11 A Yes.

12 Q Thank you.

13 PRESIDING MEMBER LAURIE: Anything else,  
14 Dr. Moore?

15 COMMISSIONER MOORE: No, thank you.

16 PRESIDING MEMBER LAURIE: Ms. Gefter.  
17 Thank you, Ms. Miller.

18 MS. MILLER: You're welcome.

19 HEARING OFFICER GEFTER: All right.

20 Thank you. Are there any questions from staff?

21 MR. RATLIFF: No.

22 DR. UNGER: No.

23 HEARING OFFICER GEFTER: Thank you, you  
24 may be excused. Thank you very much.

25 We're going to go on to the topic of

1 land use. Is the applicant prepared with their  
2 witness?

3 MR. THOMPSON: Yes, we have one witness  
4 by declaration, but we would like to call Mr.  
5 Wehn.

6 HEARING OFFICER GEFTER: Mr. Wehn is  
7 still under oath from yesterday.

8 DIRECT EXAMINATION

9 BY MR. THOMPSON:

10 Q Mr. Wehn, in your prepared testimony  
11 which is currently part of exhibit 38, you discuss  
12 the County approvals, land use and the Williamson  
13 Act. Would you please give a very brief summary  
14 of the County input and approvals for this  
15 project?

16 A With regard to the Williamson Act, the  
17 planning commission met on Thursday, September  
18 14th, recommended approval, three-to-zero vote, to  
19 send the recommendation to the board of  
20 supervisors.

21 The board of supervisors will be meeting  
22 this afternoon at 2:00 to consider that approval  
23 recommendation from the planning commission.

24 We hope to have, if that's an  
25 affirmative vote, that information transferred

1 over to us this afternoon for inclusion into the  
2 record.

3 EXAMINATION

4 BY COMMISSIONER MOORE:

5 Q Mr. Wehn, for the record, maybe you  
6 could describe the process. The Williamson Act  
7 has a process by which you can withdraw early  
8 underneath the contract date, and pay a penalty,  
9 if you will, lost property tax penalty.

10 And perhaps you could describe that  
11 formula for the record.

12 A The landowner, which is Tejon Ranch,  
13 filed a notice of cancellation. That notice of  
14 cancellation created an assessment to be made to  
15 the property. That assessment was finalized by  
16 the Kern County appraiser. I believe the number,  
17 and I'm going to be a little bit off, but I think  
18 the value, in terms of fees that we will be  
19 paying, is \$625,000.

20 Q Can you differentiate that again for the  
21 record, between a notice of nonrenewal versus the  
22 cancellation?

23 A Well, the notice of nonrenewal is  
24 basically saying that the plant is not to renew  
25 the contract, the Williamson Act contract.

1 Cancellation is the formal action taken to remove  
2 the land from the Williamson Act and convert it  
3 into a land use of rather than agriculture, but to  
4 industrial or some other land use designation.

5 Q Well, in this case it is. I mean you  
6 could have a cancellation that might not result in  
7 a different land use, although the economic  
8 incentive would certainly be against that, doing  
9 it.

10 A That's correct.

11 Q So the notice of nonrenewal, again for  
12 the record, establishes a phase out over the ten-  
13 year contract period with no penalty. So in this  
14 case the County's assessing a penalty because of  
15 early withdrawal?

16 A That is correct.

17 Q And was there not a legislative event  
18 that was at least sent to the Governor's desk, and  
19 frankly I don't know the outcome on the bill, that  
20 would have affected this withdrawal?

21 A The bill that was before the Assembly  
22 and Senate was taking the 180-day appeal period  
23 and have it conform to the CEC rehearing period.  
24 That was passed by both the Senate and the  
25 Assembly, and is currently sitting at the

1 Governor's Office for signature.

2 PRESIDING MEMBER LAURIE: You're talking  
3 about the statute of limitations?

4 MR. WEHN: Statute of limitations with  
5 regard to the appeal period, yes.

6 BY COMMISSIONER MOORE:

7 Q But it was specific to just --

8 A This project, the Pastoria project.

9 Q -- a limited -- right.

10 A It was not general, it was this --

11 Q Do you remember the bill number on that,  
12 because I, frankly, I've forgotten it?

13 MR. RATLIFF: It's in the staff  
14 testimony, the bill number.

15 COMMISSIONER MOORE: Okay.

16 MR. THOMPSON: We'll look back and get  
17 it.

18 HEARING OFFICER GEFTER: I have a  
19 question on that.

20 BY HEARING OFFICER GEFTER:

21 Q Mr. Wehn, do you know what's in the  
22 final version of the bill, how many days they  
23 settled on for an appeal period?

24 A They did not settle on a duration, a  
25 specific duration. What they said was that it

1 would conform to the 30-day rehearing period, such  
2 that the decision today by the board of  
3 supervisors will terminate the agreement. The end  
4 date would be the 30th day of the rehearing period  
5 for the CEC decision.

6 Q You're referring to the 30-day  
7 reconsideration period after the Commission votes  
8 on the AFC?

9 A Yes, I am.

10 BY COMMISSIONER MOORE:

11 Q In this case what will happen to the  
12 land not withdrawn from Williamson Act contract?  
13 In other words, if there's land elsewhere on the  
14 ranch that still remains in an open-space  
15 contract, so in effect this is an island that is  
16 pulled out.

17 With reference to that, will that -- am  
18 I right, first of all?

19 A There are only approximately 30 acres of  
20 land that we are taking out of the Williamson Act,  
21 and that is where the plant facility will be  
22 located.

23 Q And so with regard to the land that is  
24 surrounding this parcel, the 30 acres, as far as I  
25 know the vast bulk of it is still in Williamson

1 contracts. Is there any intention to change that  
2 designation at all?

3 A There's none to my knowledge. I can  
4 only make reference however to the rock quarry  
5 that is sitting right adjacent to this facility,  
6 which obviously has to be zoned industrial.

7 Q And do you expect that activity on this  
8 site will influence the kind of agriculture that  
9 is protected under a Williamson contract in the  
10 surrounding area?

11 A I don't foresee any impact to the  
12 surrounding area.

13 Q What is it currently used for? Grazing?

14 A Just grazing.

15 Q So it's low intensity grazing?

16 A Yes. There are no crops --

17 Q No row crops and no irrigated --

18 A No irrigation, no. It's pretty barren  
19 land.

20 Q Understand. Thank you.

21 DIRECT EXAMINATION - Resumed

22 BY MR. THOMPSON:

23 Q Mr. Wehn, with regard to the exhibit  
24 list, if you will look at exhibit number 41. We  
25 have made copies of what I believe to be two parts



1 of exhibit 41. One is dated August 24. The  
2 second I think is dated September I want to say  
3 14.

4 (Pause.)

5 BY MR. THOMPSON:

6 Q With regard to a document set that is  
7 being passed out, both of these documents, one  
8 dated August 24, the other dated September 14, are  
9 both -- one is an addendum from the Kern County  
10 Planning Department Planning Commission Staff  
11 report, and one is the Kern County Planning  
12 Department Planning Commission Staff report dated  
13 August 24, is that correct?

14 A Yes.

15 Q And these documents you wish to be  
16 admitted into the record as exhibit 40 of exhibit  
17 41?

18 A Yes.

19 HEARING OFFICER GEFTER: Is there any  
20 objection, staff?

21 MR. RATLIFF: To exhibit 41? No.

22 HEARING OFFICER GEFTER: Intervenors?

23 DR. UNGER: No.

24 MS. GRIFFIN: Wait a minute.

25 HEARING OFFICER GEFTER: Ms. Griffin.

1 MS. GRIFFIN: Excuse me. This is the  
2 cancellation or is this the parcel variation  
3 you've handed me?

4 PRESIDING MEMBER LAURIE: This is the  
5 cancellation of the Williamson Act contract.

6 MS. GRIFFIN: Okay, not the parcel.  
7 Thank you.

8 HEARING OFFICER GEFTER: If you have  
9 questions about this document you could ask Mr.  
10 Wehn when it is your turn to cross-examine.

11 MS. GRIFFIN: Okay.

12 HEARING OFFICER GEFTER: At this point,  
13 hearing no objection to the admission of exhibit  
14 41 into the record, it's now admitted into the  
15 record.

16 MR. THOMPSON: Thank you very much.

17 BY MR. THOMPSON:

18 Q Mr. Wehn, are there any other local land  
19 use approvals that the applicant has recently  
20 obtained?

21 A Yes, it was the approval of the  
22 tentative map, and that approval was by the  
23 director of the planning department on September  
24 14th. And we should have the signed copy of that  
25 approval for inclusion into the record today.

1 EXAMINATION

2 BY PRESIDING MEMBER LAURIE:

3 Q The tentative map is the tentative  
4 parcel map actually creating the 31-acre parcel,  
5 is that correct?

6 A That is correct.

7 Q And there are a number of conditions  
8 attached to that map?

9 A That is correct.

10 Q Does the Committee have a copy of those  
11 conditions?

12 A I do not believe that you have a copy at  
13 this moment, but we will have a copy for the  
14 inclusion into the record before the end of the  
15 day.

16 Q Okay, because the conditions on that map  
17 may have to be incorporated into our record and  
18 our findings. So we need to have an understanding  
19 of what those conditions are.

20 I assume they are such as building  
21 roadways and things like that, and access roads?

22 A There are a number of conditions. It's  
23 possible that Mr. Rickels from Kern County's  
24 planning department could expound on those. But I  
25 did approve the conditions for us to move forward

1 for that hearing that was held on September 14th.

2 BY HEARING OFFICER GEFTER:

3 Q Let me just ask you about the timing.

4 The meeting today is regarding the Williamson Act  
5 cancellation?

6 A Yes.

7 Q However, the Commission met on September  
8 14th to approve a tentative map? My question is  
9 can the map be -- the map cannot be approved until  
10 after the planning commission votes on the  
11 Williamson Act cancellation?

12 A Well, I think it's all going to come  
13 together with respect to the exemption that I  
14 believe that the County is taking, and that is  
15 relying on the California Energy Commission's  
16 decision on our project.

17 And upon that decision they will  
18 then -- it will become effective, or approved.

19 Q I was just looking at the sequencing and  
20 the timing of the process within the County. I  
21 understand that you have to have the parcel  
22 removed from the Williamson Act contract in order  
23 to develop a map, is that correct? A new parcel?

24 A I don't believe that there's a sequence  
25 of that manner, but I would have to rely on Kern

1 County's representative to bring more clarity to  
2 it.

3 Q I will ask him that question when he  
4 comes forward and testifies.

5 HEARING OFFICER GEFTER: Go on, I'm  
6 sorry.

7 MR. THOMPSON: Mr. Wehn is tendered for  
8 cross-examination in the area of land use. And I  
9 would ask the Committee's indulgence that when we  
10 get a signed copy later on in the day I'll ask for  
11 an exhibit number at that time. Thank you.

12 HEARING OFFICER GEFTER: Does staff have  
13 cross-examination?

14 MR. RATLIFF: A clarifying question if I  
15 may.

16 CROSS-EXAMINATION

17 BY MR. RATLIFF:

18 Q Mr. Wehn, I notice from the staff report  
19 and the proposed resolution that the cancellation  
20 appears to be related directly to the Pastoria  
21 Energy project.

22 If that project should not be built  
23 would the cancellation of the Williamson Act not  
24 occur? Or is that in some way rescinded by  
25 failure of the project to be approved?

1           A     I have been informed that without the  
2     CEC decision, and our payment of the fees of  
3     \$625,000, then this Williamson Act will not take  
4     effect, or the cancellation will not take effect,  
5     and it will revert back under the Williamson Act.

6                     So in other words, there'll be no change  
7     to the land use if those two events do not occur.

8           Q     Thank you.

9                     HEARING OFFICER GEFTER: Do the  
10    intervenors have cross-examination of the witness?  
11    Ms. Griffin.

12                    MS. GRIFFIN: Yes.

13                             CROSS-EXAMINATION

14    BY MS. GRIFFIN:

15           Q     Now, Mr. Wehn, you really shouldn't be  
16    here, I mean this is Tejon's land --

17                    PRESIDING MEMBER LAURIE: Excuse me, Ms.  
18    Griffin, if you have a question, ask the question.

19    BY MS. GRIFFIN:

20           Q     Now, it was Tejon who was the applicant  
21    for the Williamson Act contract cancellation?

22           A     That is correct.

23           Q     And the parcel map variance?

24           A     Tejon Ranch is the owner of that land.  
25    They own it in fee.

1           Q     Yeah, and they needed a parcel map  
2     variance because a parcel has to be a minimum of  
3     80 acres, and your 31.5 acre development would  
4     shave off something of two parcels?

5           HEARING OFFICER GEFTER:   What is your  
6     question?  Reframe your question.

7           MS. GRIFFIN:   Well, I mean -- Tejon was  
8     the applicant in this.  The Commission doesn't  
9     seem to understand the mechanics of what went  
10    on --

11          PRESIDING MEMBER LAURIE:   Excuse me, Ms.  
12    Griffin, I believe the Committee does understand  
13    the mechanics.  We understand that Tejon Ranch was  
14    the applicant, and is the applicant.

15          MS. GRIFFIN:   Okay.

16    BY MS. GRIFFIN:

17          Q     Now, for the appeal to the Williamson  
18    Act contract if the Governor doesn't sign it, this  
19    bill that refers to Pastoria, what happens?  
20    They're just back --

21          PRESIDING MEMBER LAURIE:   Are you asking  
22    the witness?

23          MS. GRIFFIN:   Well, somebody.

24          MR. WEHN:   I believe the answer to that  
25    question is that there will be a 180-day appeal

1 period from the date in which the board of  
2 supervisors approves the Williamson Act  
3 cancellation.

4 BY MS. GRIFFIN:

5 Q Now, Mr. Wehn, this meeting that will  
6 occur at 2:00 this afternoon was originally  
7 scheduled for September 26, not to coincide with  
8 this meeting. And Thursday I put in a request to  
9 the planning department and the clerk of the board  
10 of supervisors to have it continued, to not  
11 coincide.

12 Did Enron -- they told me Enron would  
13 have to agree. I assume then, by your testimony  
14 now, that Enron did not agree to a continuance?

15 A You should believe that no one asked me  
16 the question.

17 Q They never asked you? Okay, thank you.  
18 But I did request a continuance because I can't be  
19 in two places at once.

20 The meeting was originally scheduled for  
21 the 26th, moved to the 19th, and I asked that it  
22 be moved again.

23 Now, this stuff is county business. I  
24 have some questions about the land use, the staff  
25 report.



1                   HEARING OFFICER GEFTER: There will be a  
2                   witness from the County in a few minutes, and you  
3                   can hold your questions for that person if you  
4                   want to.

5                   MS. GRIFFIN: Okay, yeah. And then I  
6                   have questions about the land use, the staff  
7                   report.

8                   HEARING OFFICER GEFTER: You can ask  
9                   staff witness that question.

10                  MS. GRIFFIN: Okay. Thank you.

11                  HEARING OFFICER GEFTER: Thank you.

12                  Mr. Wehn, you're excused on land use.

13                  Staff, you may present your witness on  
14                  land use.

15                  MR. RATLIFF: The staff witness is Ms.  
16                  Amanda Stennick.

17                  HEARING OFFICER GEFTER: Ms. Stennick  
18                  needs to be sworn.

19                  MR. RATLIFF: Is it your preference that  
20                  all witnesses sit here, or can she testify from  
21                  there?

22                  HEARING OFFICER GEFTER: If she can  
23                  speak loudly enough so everyone can hear her.

24                  PRESIDING MEMBER LAURIE: You do have an  
25                  amplifying microphone in front of you. Please use

1 it.

2 Whereupon,

3 AMANDA STENNICK

4 was called as a witness herein and after first  
5 being duly sworn, was examined and testified as  
6 follows:

7 DIRECT EXAMINATION

8 BY MR. RATLIFF:

9 Q Ms. Stennick, did you prepare the staff  
10 testimony that is part of the final staff  
11 assessment for the Pastoria Power project?

12 A Yes, I did.

13 Q And did you prepare the supplemental  
14 testimony dated September 8, 2000, the portion of  
15 it that has to do with land use?

16 A Yes, I did.

17 Q And is that testimony true and correct  
18 to the best of your knowledge and belief?

19 A Yes.

20 Q Do you have any changes to make to that  
21 testimony at this time?

22 A I have one small change to make on page  
23 155. The second sentence should be deleted and  
24 the following in its place: However, because the  
25 Energy Commission is the in lieu permitting

1 authority for this project, staff recommends that  
2 the Commission include in its permit the  
3 requirements that Kern County would otherwise  
4 require."

5 Q Okay, and that language pertains to the  
6 conditional use permit, is that correct?

7 A That's correct.

8 Q Are there any other changes?

9 A No.

10 Q Would you please summarize your  
11 testimony for the Committee?

12 A I reviewed the project for consistency  
13 and conformance with the Kern County general plan,  
14 the zoning ordinance, the land division ordinance,  
15 the Subdivision Map Act and the Williamson Act.

16 The analysis indicates that the project,  
17 by itself, and cumulatively, will have no land use  
18 impacts that cannot be mitigated to a level below  
19 significance.

20 Given the current pressure on ag lands  
21 in Kern County and elsewhere in California, staff  
22 might consider the project's impacts to be  
23 significant were the land highly productive  
24 cultivated land. However the land has been  
25 historically used for grazing. And it is not

1 designated prime, unique or farmland of statewide  
2 importance.

3 If the Commission certifies the project  
4 staff recommends that it adopt the conditions of  
5 certification if the conditions are implemented  
6 and with approval of the parcel map and  
7 cancellation of the Williamson Act contract, the  
8 project will comply with all applicable LORS,  
9 laws, ordinances, regulations and standards, plans  
10 and policies.

11 Thank you.

12 HEARING OFFICER GEFTER: Does applicant  
13 have cross-examination?

14 MR. THOMPSON: We do not, and as a  
15 statement of counsel, we accept the changes that  
16 staff proposes in their testimony.

17 MR. RATLIFF: We will provide written  
18 copies of that. But if you'll indulge us, we'll  
19 provide it this afternoon.

20 HEARING OFFICER GEFTER: Yes, thank you.

21 PRESIDING MEMBER LAURIE: I have a  
22 question, Ms. Gefter.

23 EXAMINATION

24 BY PRESIDING MEMBER LAURIE:

25 Q Ms. Stennick, have you seen the

1 conditions to be attached to the parcel map?

2 A I don't -- well, let's see, I think I  
3 have a copy of that which was sent from Kern  
4 County.

5 Q Okay, well, this is my question for you:  
6 The environmental analysis of the impacts of both  
7 the ag cancellation and the parcel map are to be  
8 contained within the Energy Commission analysis,  
9 is that correct?

10 A That's correct.

11 Q The environmental analysis not only must  
12 include the direct impacts, but the indirect  
13 impacts resulting from any conditions imposed upon  
14 project approval. For example, in a subdivision  
15 you're required to build, if you're required to  
16 construct an eight-mile-long roadway, well, then  
17 your environmental analysis has to understand what  
18 the environmental impact of that eight-mile  
19 roadway is, is that correct?

20 A That's correct.

21 Q Does staff's analysis include the  
22 environmental review of the implications of both  
23 the ag cancellation and the parcel map?

24 A Staff analysis includes an environmental  
25 review of the impacts of the cancellation and the

1 parcel map.

2 Q And does that include any conditions,  
3 this would be any conditions attached thereto?

4 A The conditions would be submitted in the  
5 site development plan, which would include all the  
6 conditions that were placed on the project for the  
7 parcel map.

8 Q Will the site development plan have its  
9 own environmental analysis?

10 A The site development plan is a condition  
11 of certification that would include all the  
12 conditions that Kern County places on the parcel  
13 map when they approve their parcel map.

14 Q It has to be approved by the County, is  
15 that correct?

16 A That's correct.

17 Q Will the County do its own environmental  
18 analysis, or will that be exempt?

19 A It's my understanding that the County is  
20 relying on the document provided by staff.

21 Q Okay, thank you.

22 HEARING OFFICER GEFTER: Any further  
23 cross-examination? Applicant?

24 MR. THOMPSON: None from applicant,  
25 thank you.

1                   HEARING OFFICER GEFTER: Ms. Griffin, do  
2                   you have questions of the staff witness?

3                   MS. GRIFFIN: Yes.

4                   CROSS-EXAMINATION

5                   BY MS. GRIFFIN:

6                   Q     Ms. Stennick, in your research have you  
7                   ever seen this before?

8                   HEARING OFFICER GEFTER: I'm sorry, you  
9                   need to show us that map --

10                  MS. GRIFFIN: Yeah, well, I'm going to  
11                  enter this as an exhibit.

12                  HEARING OFFICER GEFTER: Okay, --

13                  MS. GRIFFIN: But my copy is terrible.

14                  HEARING OFFICER GEFTER: You need to  
15                  give copies to both the applicant and the staff,  
16                  and give us a copy, as well. And tell us what it  
17                  is.

18                  BY MS. GRIFFIN:

19                  Q     Do you know what Project Rancho El Tejon  
20                  is?

21                  HEARING OFFICER GEFTER: I'm sorry,  
22                  first you have to tell us what this document is,  
23                  and we will assign an --

24                  MS. GRIFFIN: Well, you know, --

25                  HEARING OFFICER GEFTER: -- exhibit

1       number to it.

2               MS. GRIFFIN:  The staff was supposed to  
3       do the research on this.

4               HEARING OFFICER GEFTER:  Okay, let's  
5       just follow your direction here, and then we'll  
6       talk about that later.  But we'll number this  
7       exhibit 48, and if you could identify this map for  
8       us, Ms. Griffin.

9               PRESIDING MEMBER LAURIE:  Just tell us  
10      generally --

11              MS. GRIFFIN:  It's a --

12              PRESIDING MEMBER LAURIE:  -- what the  
13      map is.

14              MS. GRIFFIN:  -- November 1982 approved  
15      Rancho El Tejon.

16              HEARING OFFICER GEFTER:  It's approved  
17      of what?

18              MS. GRIFFIN:  It's an approved project.

19              HEARING OFFICER GEFTER:  Called Rancho?

20              MS. GRIFFIN:  El Tejon.

21              HEARING OFFICER GEFTER:  Rancho El  
22      Tejon.

23              MS. GRIFFIN:  November 1982.

24              HEARING OFFICER GEFTER:  And where did  
25      you get the map from?



1 MS. GRIFFIN: It's in our last general  
2 plan.

3 HEARING OFFICER GEFTER: It's in the --

4 MS. GRIFFIN: Well, it's when the  
5 general plan was being revised in the early '80s.

6 HEARING OFFICER GEFTER: Okay, so in the  
7 Kern County general plan revision?

8 MS. GRIFFIN: This was a special project  
9 and it was approved. General plans have to be  
10 revised about every 20 years, so that was our last  
11 one.

12 PRESIDING MEMBER LAURIE: They're  
13 supposed to be revised every five.

14 MS. GRIFFIN: And I'd like to state for  
15 the record both the Audubon Society and Kern-  
16 Kaweah Sierra Club, both commented on the Rancho  
17 El Tejon project in 1982.

18 HEARING OFFICER GEFTER: Okay, so you  
19 have distributed this map and it's now exhibit 48,  
20 and you have a question for the staff about the  
21 map?

22 MS. GRIFFIN: Yes. Now, the big one she  
23 can see better, or somebody can see better.

24 BY MS. GRIFFIN:

25 Q Now, Ms. Stennick, do you know how much

1 land was owned by Tejon Ranch before they started  
2 selling off in recent years?

3 A I'm sorry, I don't know.

4 Q Okay. It used to be 28 percent.

5 A Okay.

6 Q For the record.

7 MS. GRIFFIN: Now I have something for  
8 the Commissioners and --

9 HEARING OFFICER GEFTER: Do you have  
10 another exhibit that you'd like to offer?

11 MS. GRIFFIN: Yes, I do.

12 HEARING OFFICER GEFTER: Okay, that  
13 would be exhibit 49, and you can describe that to  
14 us.

15 MS. GRIFFIN: Okay, now these are from  
16 recent to the late '90s planning documents.

17 HEARING OFFICER GEFTER: And what is  
18 this document?

19 MS. GRIFFIN: Okay, now the white part  
20 in the middle is the Petrol Plaza, or the truck  
21 stop up there on Laval Road, and it's built. It's  
22 approved and built.

23 And then the darker around it is the  
24 Tejon industrial complex which was approved this  
25 year.

1                   HEARING OFFICER GEFTER: And what is the  
2                   date of this map, do you know?

3                   MS. GRIFFIN: Late last year, early this  
4                   year.

5                   HEARING OFFICER GEFTER: This planning  
6                   map of central plaza on Laval Road and Tejon  
7                   industrial complex site is identified as exhibit  
8                   49.

9                   Do you want to --

10                  BY MS. GRIFFIN:

11                  Q     Ms. Stennick, were you aware in your  
12                  research that the Petrol Plaza, the 1982  
13                  environmental document was used, incorporated by  
14                  reference into the Petrol Plaza project?

15                  MR. RATLIFF: Which 1982 document?

16                  MS. GRIFFIN: The Rancho El Tejon EIR  
17                  was the environmental basis for the negative  
18                  declarations for the Petrol Plaza.

19                  PRESIDING MEMBER LAURIE: And is your  
20                  question is staff aware of that?

21                  BY MS. GRIFFIN:

22                  Q     Did staff research this, find that out?

23                  A     I took a look at the EIR that was  
24                  prepared --

25                  Q     No, no. The Petrol Plaza only had

1 negative declarations, mitigated negative decs.

2 PRESIDING MEMBER LAURIE: Ms. Griffin,  
3 allow the witness to answer the question, please.

4 MS. GRIFFIN: Okay.

5 MS. STENNICK: In looking at the  
6 potential cumulative impacts of this project I  
7 reviewed the Tejon industrial complex, the EIR  
8 that was done on that project, and the notice of  
9 preparation that was prepared by Kern County for  
10 that project.

11 BY MS. GRIFFIN:

12 Q But I'm talking about a separate -- the  
13 Petrol Plaza and the Tejon industrial complex are  
14 separate projects.

15 A I understand that. I'm telling you what  
16 I did review.

17 Q Okay.

18 HEARING OFFICER GEFTER: Ms. Griffin, I  
19 think that your questions would be more  
20 appropriately answered by the representative from  
21 the planning commission.

22 MS. GRIFFIN: Well, --

23 HEARING OFFICER GEFTER: Ms. Stennick  
24 has already answered your question.

25 MS. GRIFFIN: I'd also like -- well, let

1 me finish. I'd also quickly finish.

2 BY MS. GRIFFIN:

3 Q The Tejon industrial complex had a  
4 separate EIR, although some aspects of it were  
5 incorporated by reference from the '82 one, also  
6 incorporated into the planning document was San  
7 Imidio new town.

8 HEARING OFFICER GEFTER: One of the  
9 questions I have for you, Ms. Griffin, is the  
10 relevance of these maps that you are distributing  
11 as exhibits, because in order for these exhibits  
12 to be moved into the record you need to establish  
13 a relevant --

14 MS. GRIFFIN: Okay.

15 HEARING OFFICER GEFTER: -- basis for  
16 them. So, if you could just give us --

17 MS. GRIFFIN: Now, first of all --

18 HEARING OFFICER GEFTER: -- explain to  
19 us where you're going --

20 MS. GRIFFIN: -- the staff --

21 HEARING OFFICER GEFTER: -- with your  
22 questioning --

23 MS. GRIFFIN: -- two or three times the  
24 staff has informed me, I've asked them about the  
25 Grapevine Center and they keep informing me that

1 the Grapevine Center is the Tejon industrial  
2 complex, and I keep telling them it isn't.  
3 They're two totally separate projects. They have  
4 different CEQA tracks to them, even, different  
5 documents to refer to.

6 And now I'd like -- and I have sent this  
7 to them, I mailed this to staff two, three months  
8 ago, and they still -- the final staff assessment  
9 in here still says, no, no, no, those are the same  
10 projects. They're not the same projects. They  
11 have different --

12 HEARING OFFICER GEFTER: I think that --

13 MS. GRIFFIN: -- documents and --

14 HEARING OFFICER GEFTER: Okay, we --

15 MS. GRIFFIN: Okay, now I'll put this in  
16 for evidence -- Roberta said put it in for  
17 evidence.

18 HEARING OFFICER GEFTER: What are you  
19 offering? The map of the San Imidio project?

20 MS. GRIFFIN: Yes.

21 HEARING OFFICER GEFTER: Okay, that  
22 would be identified exhibit 51 -- I'm sorry,  
23 exhibit 50, and it's the San Imidio project.

24 MS. GRIFFIN: San Imidio new town, yes.

25 HEARING OFFICER GEFTER: E-m-i-d-i-o?

1 All right. And what is the date of the map that  
2 you're providing here?

3 MS. GRIFFIN: I would say that would  
4 have been let's say early '92, early in the year  
5 '92, late '91.

6 HEARING OFFICER GEFTER: Okay. I  
7 would --

8 MS. GRIFFIN: I'm almost finished. I've  
9 got one --

10 HEARING OFFICER GEFTER: Okay. But I  
11 would say that you -- it would be more appropriate  
12 for you to ask these questions of the planning  
13 commission. But I'm still not clear on the  
14 relevance of these maps that you're giving us.

15 MS. GRIFFIN: And I have one more thing.  
16 There was an article in Saturday's, this last  
17 Saturday's Bakersfield Californian, "Ranch to Sell  
18 its Cattle Operation."

19 Now, Commissioners, I don't think the  
20 potential for this project interfacing with  
21 urbanization has been analyzed. Now, that's my  
22 only point.

23 The 1982 EIR, as far as the County is  
24 concerned, is still active. You add the Petrol  
25 Plaza and you're going to have the Grapevine

1 Center with it, and then cumulative impacts from  
2 the -- now, San Imidio new town, on paper is still  
3 active. They used the cumulative impacts for San  
4 Imidio new town to show, you know, what a  
5 wonderful thing it would be to have an industrial  
6 complex rather than a new town out there, housing,  
7 residential development.

8 So I think it's still legally viable.  
9 That's my only point, is that for the last two or  
10 three months I have been telling the staff, you  
11 know, there's going to be urban interface here.  
12 Let's have a little -- some analysis of it, or an  
13 idea of what the people of Kern County are getting  
14 into.

15 HEARING OFFICER GEFTER: All right. You  
16 distributed another map called Landscape Concept  
17 Plan for the Grapevine Center. That will be  
18 identified as exhibit 51. Do you know the date of  
19 this map?

20 PRESIDING MEMBER LAURIE: Approximate  
21 would do.

22 MS. GRIFFIN: Well, it's based, if you  
23 go back to the 1982, November 1982 EIR, it's  
24 there.

25 HEARING OFFICER GEFTER: All right,



1       thank you.

2               MS. GRIFFIN:  And I mean the landscape  
3       map might be just a year or so old.  And I'm not  
4       sure, reading the staff report for the Tejon  
5       industrial complex, I'm not sure that staff's  
6       analysis of the zoning around there was correct.  
7       I haven't had the time to really dig in.  I mean I  
8       know things in a rough way, and I know where to  
9       find it, but I just -- to dig in, but I simply  
10      personally have not had the time.

11              Now, part of that could be zoned for  
12      residential, commercial, I don't know.

13              HEARING OFFICER GEFTER:  You're  
14      challenging staff's analysis on the zoning for  
15      this project, for the Pastoria project?

16              MS. GRIFFIN:  I'm not -- how can you put  
17      things more gently?  I am challenging their  
18      analysis, because of urban interface out there.

19              HEARING OFFICER GEFTER:  All right.

20              MS. GRIFFIN:  But, you know, I'm not a  
21      planner, and I don't have a lot of time to be --  
22      but I'm --

23              HEARING OFFICER GEFTER:  Okay, Ms.  
24      Griffin, let's move on because I think we've  
25      discussed your --

1 MS. GRIFFIN: Okay.

2 HEARING OFFICER GEFTER: -- point now,  
3 and you'll have an opportunity to ask questions of  
4 the representative from the planning commission,  
5 which should be pretty soon.

6 Does staff have any further redirect of  
7 your witness?

8 MR. RATLIFF: No.

9 HEARING OFFICER GEFTER: Does staff have  
10 another witness?

11 MR. RATLIFF: No.

12 HEARING OFFICER GEFTER: Are you going  
13 to sponsor the planning commission representative  
14 or is --

15 MR. RATLIFF: No, we had not intended  
16 to. We were not even certain that the County  
17 would attend, but I think it would be a good thing  
18 to have the County sworn and to have them testify.

19 HEARING OFFICER GEFTER: Would you  
20 sponsor that witness?

21 PRESIDING MEMBER LAURIE: Well, --

22 MR. RATLIFF: If you want us to, we  
23 will.

24 PRESIDING MEMBER LAURIE: -- wait a  
25 minute.

1 (Pause.)

2 HEARING OFFICER GEFTER: Is there a  
3 County representative here from the planning  
4 department?

5 Would both of you come forward and we'll  
6 put you on as a panel. Essentially what we would  
7 ask of the County representatives is to confirm  
8 the process that the applicant and the staff  
9 described, and if you would -- does staff want to  
10 go forward and sponsor these witnesses?

11 MR. RATLIFF: Actually my preference is  
12 that we not. And the reason is --

13 HEARING OFFICER GEFTER: All right.

14 MR. RATLIFF: -- that typically when we  
15 do sponsor witnesses, typically it would be the  
16 Air Board or the ISO. It's because we're familiar  
17 with their testimony in advance, and --

18 HEARING OFFICER GEFTER: Okay, that's  
19 fine, --

20 MR. RATLIFF: -- know what the  
21 underlying documents they're going to testify to.  
22 We have no idea really --

23 HEARING OFFICER GEFTER: Okay, then  
24 that's fine. What we'll do is --

25 MR. RATLIFF: -- what the staff's

1 documents are --

2 HEARING OFFICER GEFTER: -- procedurally  
3 the Committee will call the County  
4 representatives, and we will ask you to identify  
5 yourselves and also be sworn. Sir.

6 MR. RICKELS: My name is Dave Rickels.

7 HEARING OFFICER GEFTER: And what is  
8 your position with the County?

9 MR. RICKELS: I'm the Planning Chief  
10 Special Projects.

11 HEARING OFFICER GEFTER: Thank you.

12 MS. GALLO: My name is Pauline Gallo;  
13 I'm a Senior Planner in the Zoning Unit.

14 HEARING OFFICER GEFTER: Thank you.  
15 Would you both be sworn by our court reporter, and  
16 then we'll go forward.  
17 Whereupon,

18 DAVE RICKELS and PAULINE GALLO  
19 were called as witnesses herein and after first  
20 being duly sworn, were examined and testified as  
21 follows:

22 PRESIDING MEMBER LAURIE: Folks, this is  
23 an amplifying microphone. Could you move that  
24 closer to you, please?

25 //

1 EXAMINATION

2 BY HEARING OFFICER GEFTER:

3 Q Mr. Rickels, quite simply could you  
4 describe to us the process that the County is  
5 following in terms of the sequencing of the  
6 Williamson Act cancellation, the subdivision map  
7 redrawing, and then your conditional use permit  
8 that would be necessary after those other items  
9 are concluded?

10 MR. RICKELS: Well, the County has  
11 approved a tentative parcel map for the project.  
12 The County has approved a zone variance to allow  
13 the creation of a roughly 31-acre parcel.

14 The planning commission has made a  
15 recommendation that the board give favorable  
16 consideration to the cancellation of the  
17 Williamson Act contract. As mentioned previously,  
18 that cancellation will be heard by the board this  
19 afternoon.

20 HEARING OFFICER GEFTER: And do you have  
21 a copy of the list of conditions that would be  
22 attached to the new parcel map?

23 MR. RICKELS: Yes.

24 HEARING OFFICER GEFTER: Do you have a  
25 copy with you here today?

1 MR. RICKELS: Yes.

2 HEARING OFFICER GEFTER: May we have a  
3 copy of that?

4 MR. RICKELS: I guess so. I only have  
5 one. I wasn't asked to bring anything, so I only  
6 brought one for my own reference.

7 HEARING OFFICER GEFTER: Perhaps we can  
8 get copies made and you can give it to us.

9 MR. THOMPSON: If I may, Ms. Gefter, we  
10 have made arrangements with the County to try and  
11 get a copy of the signed version as soon as it's  
12 signed, and make copies to put into the record. I  
13 don't know if it would be appropriate to get a  
14 draft and put it into the record, but if you'd  
15 prefer that, we can try.

16 But our intent was to get a copy of it  
17 signed.

18 HEARING OFFICER GEFTER: Thank you.

19 PRESIDING MEMBER LAURIE: Mr. Thompson,  
20 my concern is I have to have some sense of what  
21 conditions are attached to the parcel map so that  
22 I can look at it now and determine in my own mind  
23 whether the environmental analysis adequately  
24 addresses the proposed conditions.

25 If they are standard conditions attached

1 to a parcel map, then I would estimate that it is  
2 not an issue. But conditions on a map could  
3 include anything. And I just don't know what  
4 those might be.

5 And so the earlier moment we can get a  
6 copy of those conditions the better off we are.  
7 Perhaps copies can be made at this time.

8 HEARING OFFICER GEFTER: We'll take a  
9 recess and get copies made of the conditions  
10 attached to the map.

11 (Brief recess.)

12 PRESIDING MEMBER LAURIE: Thank you.

13 HEARING OFFICER GEFTER: Mr. Thompson,  
14 would you like to question the witness on the  
15 conditions of approval for the parcel map?

16 MR. THOMPSON: Thank you, Ms. Gefter.  
17 We have distributed a document which has as its  
18 title about three rows down, "Conditions of  
19 Approval."

20 CROSS-EXAMINATION

21 BY MR. THOMPSON:

22 Q I would like to ask Mr. Rickels the  
23 origin of those conditions of approval, what  
24 document those have come from?

25 MR. RICKELS: These conditions are

1 contained in a staff report which was presented at  
2 a public hearing September 14th of this year.  
3 It's referred to as a directors hearing.

4 In this particular instance the Hearing  
5 Officer was considering the parcel map and a zone  
6 variance to allow the creation of the 31-acre  
7 parcel shown on the parcel map.

8 MR. THOMPSON: Thank you. Could I have  
9 the document which has as a title, conditions of  
10 approval, marked the next exhibit in order?

11 HEARING OFFICER GEFTER: That would be  
12 exhibit 52.

13 MR. THOMPSON: Thank you. We had ten  
14 copies -- for the benefit of the public, we had  
15 ten copies made and distributed them to the most  
16 active parties here. We are having more copies  
17 made, and those will be distributed to the members  
18 of the audience shortly.

19 I guess I would tender Mr. Rickels for  
20 cross-examination on exhibit 52 and other matters.

21 HEARING OFFICER GEFTER: Would you move  
22 exhibit 52 into the record?

23 MR. THOMPSON: I would like to move  
24 exhibit 52 into the record, thank you.

25 HEARING OFFICER GEFTER: Any objection?



1 Staff?

2 MR. RATLIFF: No. But we --

3 HEARING OFFICER GEFTER: Would you like  
4 to voir dire the witness on these?

5 MR. RATLIFF: No. What I was going to  
6 suggest is we may want to move other planning  
7 staff reports into the record, as well. And have  
8 those marked.

9 HEARING OFFICER GEFTER: That would be  
10 fine.

11 MR. RATLIFF: Do you want to do that now  
12 or later?

13 HEARING OFFICER GEFTER: I'm going to  
14 first move this document into evidence, and then  
15 we'll discuss other documents.

16 Do the intervenors have objection to the  
17 conditions of approval, exhibit 52?

18 DR. UNGER: No.

19 HEARING OFFICER GEFTER: Okay. Ms.  
20 Griffin?

21 MS. GRIFFIN: I was at the meeting.  
22 Now, Mr. Ellis said he would put a extra condition  
23 of approval --

24 HEARING OFFICER GEFTER: Okay, all you  
25 need to do is tell us whether you object or have

1       any questions about just moving this into the  
2       record. Then you can ask questions about it.

3               MS. GRIFFIN: No.

4               HEARING OFFICER GEFTER: Thank you.

5               MS. GRIFFIN: I have a question.

6               HEARING OFFICER GEFTER: Exhibit 52 is  
7       now moved into the record.

8               PRESIDING MEMBER LAURIE: Ms. Gefter,  
9       I'm not satisfied that --

10              MS. GRIFFIN: I mean yes -- I meant  
11       yes --

12              PRESIDING MEMBER LAURIE: Excuse me.  
13       I'm not satisfied that Ms. Griffin's exhibits have  
14       been moved into the record.

15              HEARING OFFICER GEFTER: Okay, we will  
16       go back and do that, as well.

17              MS. GRIFFIN: Excuse me, I meant to say  
18       yes, I objected. I objected to this being moved  
19       into the record. I meant to say yes.

20              PRESIDING MEMBER LAURIE: On what basis  
21       do you object?

22              MS. GRIFFIN: Because I just got it, and  
23       Mr. Ellis said he would put an extra condition in  
24       on my testimony about fire.

25       //

1 VOIR DIRE

2 BY MS. GRIFFIN:

3 Q And, Dave, did it get in?

4 MR. RICKELS: In the signed conditions  
5 of approval it is in, yes. This is a preliminary  
6 staff report. It's the only one that I had  
7 available to me at the time.

8 MS. GRIFFIN: Okay. Then I have no  
9 objection to this being entered into the CEC  
10 record.

11 HEARING OFFICER GEFTER: Thank you.  
12 Okay, Ms. Griffin, you had given us several maps,  
13 exhibits 48, 49, 50 and 51. Does applicant have  
14 objection to those being moved into the record?

15 MR. THOMPSON: We do not.

16 MR. RATLIFF: No.

17 MS. GRIFFIN: Okay, I request they be  
18 put into evidence.

19 HEARING OFFICER GEFTER: Okay, they are  
20 now in evidence.

21 Any further questions of Mr. Rickels?  
22 Staff?

23 MR. RATLIFF: Yes.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. RATLIFF:

3 Q Mr. Rickels, could you explain what you  
4 began to explain a moment ago concerning the  
5 additional condition which has been added to the  
6 conditions in the exhibit that was just entered?

7 A At the September 14th public hearing, as  
8 a result of Ms. Griffin's testimony, the Hearing  
9 Officer added an additional condition to the  
10 conditions that you have before you.

11 The additional condition essentially  
12 required that a note be placed on the face of the  
13 final map. The content of the note, in effect,  
14 requires development of the property to comply  
15 with state fire regulations.

16 Q Thank you. And are those fire  
17 regulations in the state fire code?

18 A Yes.

19 Q Okay. And are there any other changes  
20 that make the conditions of approval different  
21 than those that we have in this document?

22 A That was the only change that was made  
23 to the conditions of approval for the parcel map.

24 Q Thank you.

25 HEARING OFFICER GEFTER: Any other

1 questions from staff?

2 MR. RATLIFF: No.

3 HEARING OFFICER GEFTER: Ms. Griffin, do  
4 you have questions of Mr. Rickels?

5 MS. GRIFFIN: No.

6 DR. UNGER: Ms. Gefter?

7 CROSS-EXAMINATION

8 BY DR. UNGER:

9 Q Mr. Rickels, what is the estimated  
10 population within 15 miles of the Pastoria Energy  
11 Facility 20 years from now?

12 A I have no idea.

13 DR. UNGER: May I explain why it's  
14 pertinent? I have no idea, either, but my  
15 supposition is that if you look at the -- that  
16 there's enough jobs down there that there will be  
17 a city down there.

18 And I admit this is speculative, but I  
19 think it's something that we should take into  
20 consideration when we build a power plant in a  
21 city, if it becomes a city.

22 We got 25 jobs from Pastoria. We got  
23 maybe 300 jobs from the Tejon industrial complex  
24 seven miles away from Pastoria. And we got some  
25 jobs from the truck stops and what-not that are on

1 Laval Road.

2 And if you add that up, you have the  
3 nucleus for a town. The County has not permitted  
4 housing down there. I speculate that they will.  
5 And furthermore, they'll put lots of houses for  
6 people to commute to Los Angeles from there.

7 And, again, I can't prove that's going  
8 to happen, but I think that if you decide to put a  
9 power plant in a place, you should consider the  
10 possibility of that place being urban in my  
11 children's and grandchildren's time.

12 HEARING OFFICER GEFTER: Thank you. I  
13 believe the Committee has no further questions of  
14 Mr. Rickels and Ms. Gallo. You may be excused.

15 MR. THOMPSON: Thank you very much.

16 HEARING OFFICER GEFTER: Mr. Ratliff,  
17 you indicated you had staff reports that you  
18 wanted to offer into the record?

19 MR. RATLIFF: Yes. What I would like to  
20 submit would be a staff report dated August 24th  
21 by the Kern County Planning Department.

22 HEARING OFFICER GEFTER: August 24th.  
23 Okay. Do you need Mr. Rickels or Ms. Gallo to  
24 move these documents?

25 MR. RATLIFF: I don't believe so. This

1 is a staff report apparently which is the  
2 underlying basis for the cancellation of the  
3 Williamson Act contracts, and --

4 HEARING OFFICER GEFTER: Is that  
5 different from exhibit 41?

6 MR. RATLIFF: Well, I believe --

7 HEARING OFFICER GEFTER: Exhibit 41 was  
8 the August 24th staff report.

9 MR. RATLIFF: No, it is not. So let me  
10 withdraw that. Secondarily, I think we should add  
11 a staff report dated September 19th, State  
12 Addendum Kern County Planning Commission. It goes  
13 to the action which is scheduled to take place  
14 today at the board of supervisors.

15 HEARING OFFICER GEFTER: Do you have  
16 copies of that document?

17 MR. RATLIFF: Yes. And I think they  
18 were handed out, but if you don't have it I'll --

19 HEARING OFFICER GEFTER: That would be  
20 exhibit 53, and do you want to describe the  
21 document to us?

22 Off the record.

23 (Off the record.)

24 PRESIDING MEMBER LAURIE: Again, I'd ask  
25 all persons to amplify, even if speaking directly

1       into the small microphones. I think the floor  
2       belonged to staff.

3               HEARING OFFICER GEFTER: Mr. Ratliff,  
4       you were identifying exhibit 53 for the record.

5               MR. RATLIFF: Yes, it's a September 19  
6       staff report to the board of supervisors  
7       concerning the cancellation of the Williamson Act,  
8       properties that we've been discussing today.

9               It includes a draft resolution which is  
10      attached to the back.

11              HEARING OFFICER GEFTER: Is it your  
12      understanding that this draft resolution is a  
13      document that will be approved by the board today?

14              MR. RATLIFF: I would assume that that  
15      is what is before them today.

16              HEARING OFFICER GEFTER: Okay, any  
17      objection to exhibit 53?

18              MR. THOMPSON: No.

19              HEARING OFFICER GEFTER: Intervenors?

20              DR. UNGER: No.

21              HEARING OFFICER GEFTER: Thank you. All  
22      right, exhibit 53 is admitted into the record.

23              Anything else, staff?

24              MR. RATLIFF: No.

25              HEARING OFFICER GEFTER: I believe we



1 have no further questions on the topic of land  
2 use. We can move on to the next topic.

3 PRESIDING MEMBER LAURIE: Okay, we're  
4 going to have a general discussion first regarding  
5 timing for the rest of the day.

6 HEARING OFFICER GEFTER: Do you want to  
7 go off the record for that?

8 PRESIDING MEMBER LAURIE: Sure, we'll go  
9 off the record.

10 (Off the record.)

11 HEARING OFFICER GEFTER: We're going to  
12 go forward on the topic of soil and water  
13 resources.

14 MR. THOMPSON: Thank you. Applicant  
15 would like to call Ms. Anne Knowlton, and while  
16 Ms. Knowlton is getting her material arranged, the  
17 applicant submitted testimony under declaration  
18 with a rÇsumÇ attached for Mr. Robert Ray in the  
19 soils area. That is included in our exhibit 38,  
20 and I will intend to move that at the end of the  
21 proceedings.

22 Ms. Knowlton has not been sworn.

23 Whereupon,

24 ANNE KNOWLTON

25 was called as a witness herein and after first

1       being duly sworn, was examined and testified as  
2       follows:

3                               DIRECT EXAMINATION

4       BY MR. THOMPSON:

5               Q     Would you please state your name and  
6       place of employment for the record?

7               A     Anne Knowlton, and I work for URS  
8       Corporation.

9               Q     And what are your duties and  
10      responsibilities at URS?

11              HEARING OFFICER GEFTER:   Excuse me, Mr.  
12      Thompson.   Are we doing soil and water now?

13              MR. THOMPSON:   Biology --

14              HEARING OFFICER GEFTER:   Because I think  
15      isn't -- oh, no, we're doing soil and water.

16              MR. THOMPSON:   You wanted soil, I'm  
17      sorry.

18              PRESIDING MEMBER LAURIE:   Well, tell you  
19      what, as long as we have the witness here --

20              HEARING OFFICER GEFTER:   We can do it,  
21      but I'm not sure if staff's witness is here on  
22      biology.

23              Staff, is your --

24              MR. THOMPSON:   My apologies.

25              HEARING OFFICER GEFTER:   No, that's

1       okay.

2               PRESIDING MEMBER LAURIE:   The answer is  
3       yes.

4               HEARING OFFICER GEFTER:   Is your other  
5       witness here?

6               MR. RATLIFF:   It's okay with me --

7               HEARING OFFICER GEFTER:   Fine, we're  
8       going forward on biology.   Go forward.

9               MR. THOMPSON:   Get the road map; can't  
10      deviate.

11      BY MR. THOMPSON:

12              Q     In your prepared testimony, Ms.  
13      Knowlton, you seek to sponsor exhibits 1,  
14      specifically section 5.6 and appendix N to the  
15      AFC, exhibit 14 and 30.

16              MR. THOMPSON:   And we have handed out  
17      today three additional documents that I would like  
18      to have identified for the record.   If I could go  
19      through those.

20              The first is a letter from Department of  
21      Fish and Game, dated August 16, to Mr. Sam Wehn,  
22      signed by Julie A. Means.   If I can have that  
23      identified the next exhibit in order?

24              HEARING OFFICER GEFTER:   That's exhibit  
25      54.

1                   MR. THOMPSON: Under that is also in  
2                   exhibit 54 is a letter from Douglas Pattison of  
3                   the California Regional Water Quality Control  
4                   Board to you.

5                   The next exhibit I would like to have  
6                   marked is a letter from Pastoria Energy Facility  
7                   to Ms. Kae Lewis of staff. The subject is  
8                   clarification of the Endangered Species Act  
9                   compliance. If I could have that marked as  
10                  exhibit 55?

11                  HEARING OFFICER GEFTER: Yes, exhibit  
12                  55.

13                  MR. THOMPSON: And finally, a map  
14                  produced by Patch in the lower right-hand corner  
15                  has the designation, area of buffer zone 37.7  
16                  acres. If I could have that map marked as exhibit  
17                  56.

18                  HEARING OFFICER GEFTER: That's exhibit  
19                  56.

20                  BY MR. THOMPSON:

21                  Q     Now, Ms. Knowlton, would you please very  
22                  briefly describe the import of these three  
23                  documents?

24                  A     These were just obtained following the  
25                  FSA, and -- rephrase that question?

1           Q     Okay. Let me do it this way. Would you  
2     please give a summary of your testimony, and where  
3     appropriate, include references to these three  
4     identified documents?

5           A     Okay. Let's start with 55, and that's  
6     the clarification of Endangered Species Act  
7     compliance. In 1999 we were working with Fish and  
8     Wildlife Service to address Endangered Species Act  
9     compliance via section 10.

10           And since then meetings with Fish and  
11     Wildlife Service and the California Energy  
12     Commission, and then EPA, Environmental Protection  
13     Agency, we've decided that approaching Endangered  
14     Species Act compliance via section 7 was a more  
15     appropriate method.

16           And so this letter explains that. And  
17     addresses any comments or questions you might  
18     have.

19           Another one, 54, and this is about the  
20     stream crossing permits and there are letters from  
21     Fish and Game and from the Regional Board. And  
22     they're are acknowledging that they've accepted  
23     our applications for stream crossings.

24           And that they consider our application  
25     complete. They're not the actual permits,

1       themselves, because we have to go through the CEQA  
2       compliance first, but they've basically said that  
3       they agree with our application, and that the  
4       process is ongoing.

5               HEARING OFFICER GEFTER:   What is the  
6       timing on this?

7               MS. KNOWLTON:   The timing on this, on  
8       both of their permits will be once we have the  
9       CEQA compliance completed, or the CEQA equivalent.  
10      And so the latest that that would be is, I think,  
11      December 27th, I think, so before the first of the  
12      year that they'll issue the permit.

13              Basically they're just sitting on a  
14      shelf, and they're waiting for the CEQA  
15      documentation.

16              And then the final exhibit is 56, and  
17      that's the onsite habitat mitigation. And that's  
18      the habitat that we'll be providing with an  
19      easement. There's an easement agreement between  
20      the Pastoria Energy Facility and Tejon Ranch to  
21      provide this open space for wildlife movement,  
22      specifically for the San Joaquin kit fox.

23      BY MR. THOMPSON:

24              Q     Does that complete your testimony?

25              A     Yes.

1           Q     Thank you very much.

2           MR. THOMPSON:   Applicant has copies of  
3     previously marked exhibit 40 that we'd also like  
4     to pass out at this time.

5           (Pause.)

6           MR. THOMPSON:   Applicant would like to  
7     move into evidence exhibits 14, 30, 40, 54, 55 and  
8     56.

9           HEARING OFFICER GEFTER:   Any objection?  
10    Staff?

11          MR. RATLIFF:   No.

12          HEARING OFFICER GEFTER:   Intervenors?

13          MS. GRIFFIN:   No.

14          HEARING OFFICER GEFTER:   Exhibits 14,  
15     30, 40, 54, 55 and 56 are now a part of the  
16     record.

17          MR. THOMPSON:   And with that applicant  
18     would tender Ms. Knowlton for cross-examination in  
19     the area of biology.

20          HEARING OFFICER GEFTER:   Thank you.  
21     Does staff have cross-examination of the witness?

22          MR. RATLIFF:   No.

23          HEARING OFFICER GEFTER:   Ms. Griffin.

24         //

25         //

1 CROSS-EXAMINATION

2 BY MS. GRIFFIN:

3 Q Ms. Knowlton, now you have to get a 404  
4 permit from the Army Corps of Engineers?

5 A Correct.

6 Q And is that subject to public review, a  
7 separate public review?

8 A Right.

9 Q Than this?

10 A Yeah, there is a public noticing period.

11 Q Okay, subject to review, then. Now,  
12 I've just been informed by Mrs. Jones of the U.S.  
13 Fish and Wildlife Service that they're no longer  
14 dealing with your HCP, that the EPA is?

15 A Well, the EPA is initiating consultation  
16 with the Fish and Wildlife Service. They're using  
17 our same application package that we had prior to  
18 that, the habitat conservation plan. And it's  
19 part of our package that the EPA is handing over  
20 to the Fish and Wildlife for their biological  
21 opinion.

22 Q And will that process have an  
23 opportunity for the public to review it and  
24 comment on it? Do you know?

25 A Hold on, let me ask. There's no formal



1 comment period.

2 Q Now, you've finally delineated the kit  
3 fox corridor. How is that zoned, do you know how  
4 something like that is zoned?

5 A We didn't delineate a corridor. Are you  
6 referring to the map?

7 Q I've never -- the map, I've never seen  
8 anything like this before.

9 A It's actually -- something very similar  
10 to that is in the habitat conservation plan. It's  
11 almost identical to that.

12 And it's zoned -- that's a land use  
13 question. It's the same as the project site. Are  
14 you saying how is it zoned now, or how will it be  
15 zoned?

16 Q How will it be zoned?

17 A That's zoned open space. And in the  
18 habitat conservation plan there's an easement  
19 agreement.

20 Q I saw that, but it wasn't filled in, it  
21 was blank.

22 A Right.

23 Q Now, also in the staff report they said  
24 there was going to be a 20-foot fire easement for  
25 the plant? Is that -- will be the plant, the

1 corridor or the plant corridor fire easement,  
2 or --

3 A They'll be functioning together as open  
4 space.

5 MS. GRIFFIN: Inasmuch as these issues,  
6 the permitting comes from totally different  
7 agencies, the California Energy Commission, Mr.  
8 Chairman, thank you for providing so much  
9 material, but I have no more questions for biology  
10 in this section for now. I may pick it up with  
11 fire, worker safety or something a little bit here  
12 and there. But I have no more questions for now.

13 I just needed to get straight about  
14 where the permits were coming from.

15 PRESIDING MEMBER LAURIE: That's fine,  
16 Ms. Griffin, you're doing great.

17 HEARING OFFICER GEFTER: Does applicant  
18 have any redirect?

19 MR. THOMPSON: We have none, thank you.

20 HEARING OFFICER GEFTER: Ms. Griffin,  
21 did you say you had another question? No, you're  
22 fine?

23 MS. GRIFFIN: No, no, I'm just turning  
24 to my colleague.

25 HEARING OFFICER GEFTER: Dr. Unger, you

1 have cross-examination?

2 DR. UNGER: Please.

3 HEARING OFFICER GEFTER: I'm sorry. All  
4 right.

5 CROSS-EXAMINATION

6 BY DR. UNGER:

7 Q The undescribed calecortis, has that  
8 been speciated?

9 A No, it has not.

10 PRESIDING MEMBER LAURIE: I'm sorry,  
11 what was the question?

12 DR. UNGER: I call them mariposa lilies,  
13 but real biologists call them calecortis. And has  
14 it been speciated. And I can't spell speciated,  
15 neither can my computer.

16 MR. YORK: I'll be talking about that in  
17 my testimony.

18 DR. UNGER: Okay, great. Let's stop  
19 talking about that for now, then.

20 BY DR. UNGER:

21 Q Blunt nosed leopard lizards, as I  
22 understand they were found nearby along a  
23 pipeline, but they're not found on the site. Does  
24 that mean that the habitat nearby on the pipeline  
25 is significantly different than the habitat on the

1 site?

2 A You're correct in saying that the  
3 habitat is different south of Sebastian Road where  
4 our project occurs. The grasses are dense and  
5 there is not the open spaces that the blunt nosed  
6 leopard lizards need.

7 Q Thank you. My next question is about  
8 putting the creek through a culvert. Would that  
9 lose habitat for any native creatures?

10 A The design for the crossing, for the  
11 access road across Pastoria Creek isn't a culvert.  
12 It's an arched pipe. And so the bottom will be  
13 natural. And so it will be arched up and over the  
14 creek, almost like a bridge.

15 And so there will be impacts on the  
16 banks, but it won't impede flow; it won't be  
17 impacting the natural bottom. And so the impacts  
18 are minimal, and they're related mostly to  
19 riparian vegetation. And that will be mitigated  
20 with restoration plan.

21 Q Thank you. I don't picture arched; I  
22 can picture a culvert; I can picture a bridge, but  
23 what's an arched pipe?

24 A It's right in between a bridge and a  
25 culvert. They're on footings and it's an arch.

1       So it's not a half pipe, it's an actual arch that  
2       spans the creek. And it's set on footings.

3           Q     You mean the water's going to flow  
4       uphill into the arch, and downhill on the other  
5       side?

6           A     No. The water will flow under the arch,  
7       but just the way the contours are, a bridge -- or  
8       not a bridge, but spanning from creek to creek --  
9       bank to bank isn't going to function properly. So  
10      it's actually a -- it's an arch to protect the  
11      banks and maintain the contours.

12          Q     You mean --

13          A     And then the flow goes underneath.

14          Q     The trucks will go over the arch?

15          A     Exactly.

16          Q     So it's sort of a low slung bridge?

17          A     Right, but it's above the grade of the  
18      bank, so they're still passing up and over it.  
19      It's just that they're getting a little more  
20      clearance than if it was just a straightaway.  
21      Does that make --

22          Q     Thank you, that's all I got under  
23      biology.

24                   HEARING OFFICER GEFTER: Thank you.  
25      Applicant, do you have any redirect?

1 MR. THOMPSON: No, we do not.

2 HEARING OFFICER GEFTER: Okay, the  
3 witnesses may be excused.

4 PRESIDING MEMBER LAURIE: Well, --

5 HEARING OFFICER GEFTER: The Committee  
6 has questions?

7 PRESIDING MEMBER LAURIE: No, let's go  
8 ahead and excuse the witnesses, and then members  
9 of the public -- the members of the public want to  
10 comment.

11 HEARING OFFICER GEFTER: Right, but we  
12 also have a staff witness, so we're going to go  
13 with the staff witness first.

14 PRESIDING MEMBER LAURIE: Fine.

15 HEARING OFFICER GEFTER: Okay. We'll  
16 have staff present your witness, and then members  
17 of the public may comment at the conclusion of  
18 staff's testimony.

19 Okay, staff, would you have your witness  
20 sworn.

21 MR. RATLIFF: The staff witness is Mr.  
22 Rick York. He needs to be sworn.

23 Whereupon,

24 RICK YORK

25 was called as a witness herein and after first

1       being duly sworn, was examined and testified as  
2       follows:

3                               DIRECT EXAMINATION

4       BY MR. RATLIFF:

5               Q     Mr. York, did you prepare a portion of  
6       the final staff assessment titled biological  
7       resources?

8               A     Yes, I did.

9               Q     And did you prepare supplementary  
10      testimony dated September 8th, which is of the  
11      same title?

12              A     Yes, I did.

13              Q     Is that testimony true and correct to  
14      the best of your belief?

15              A     Yes, it is.

16              Q     Do you have any changes to make in that  
17      testimony?

18              A     No, I do not.

19              Q     Could you summarize it briefly and also  
20      include in that summary an explanation of how we  
21      arrived at the current mitigation measures?

22              A     You want me to talk about my overall  
23      testimony, or just the supplementary testimony?

24              Q     Your overall testimony, summarize it,  
25      please.

1           A     The principal focus for biologic  
2     resources issue is to make certain that the  
3     Pastoria Energy Facility is built and operates in  
4     compliance with state and federal Endangered  
5     Species Act, and state and federal Clean Water  
6     Acts.

7                     This facility is located in a region of  
8     California that has quite a few sensitive species.  
9     We have seven native plant species that are state  
10    or federally listed, or otherwise listed as  
11    sensitive. And one of them is an undescribed lily  
12    that Arthur Unger mentioned earlier.

13                    And we have 36 sensitive wildlife  
14    species. Many of those are state and federally  
15    listed, as well.

16                    As far as the sensitive species that  
17    were seen during field surveys by the applicant  
18    and other people since the site visit, there was a  
19    bald eagle seen right near the site. That's a  
20    state and federally listed species.

21                    A California condor was seen in the  
22    foothills south of the proposed project site.  
23    And, as I mentioned, this undescribed lily was  
24    found during field surveys.

25                    No San Joaquin kit fox were seen in this



1 area, however it is part of the historic range of  
2 the San Joaquin kit fox. So, with some urging we  
3 all concluded that it was kit fox habitat even  
4 though none were seen. And that we were going to  
5 move on from that discussion.

6 Some of the principal issues that we  
7 wrestled with was the San Joaquin kit fox movement  
8 corridor. Fish and Wildlife Service and staff and  
9 the applicant wrestled with this issue. Since  
10 this is part of the historic range of the kit fox,  
11 the concern was that this project would be taking  
12 habitat out of the area where the kit fox would  
13 possibly move.

14 There's populations on the east side of  
15 the valley and on the west side of the valley, and  
16 the concern was that along with highway  
17 development and other future development, and the  
18 development of this project there would be further  
19 loss of habitat, and it would lessen the  
20 likelihood that the populations on one side of the  
21 valley would be able to visit the population on  
22 the other side of the valley.

23 So we wrestled with this issue and came  
24 up with an agreement that there would be an  
25 easement attached to the lease, and that easement

1 would specify how, in this case, 37 acres would be  
2 preserved during the life of the facility, what  
3 sort of land uses were allowed and not allowed so  
4 that the kit fox could move around the power plant  
5 and visit its cousins on one side of the valley or  
6 the other.

7 One of the things we worked on is the  
8 easement deed, that language, and we've seen two  
9 versions of that. And I think the second version  
10 is far better than the first version. And we're  
11 discussing the current language amongst ourselves  
12 and with the Fish and Wildlife Service to try and  
13 get that finalized here as soon as possible.

14 The undescribed lily. The applicant did  
15 field surveys prior to submitting their  
16 application for certification. There was a plant  
17 species that defied identification. And specimens  
18 were collected and shared with people who were  
19 thought to be in a position to help identify this  
20 mariposa lily, and it did not key out. Of all the  
21 nerve, it defied identification.

22 The mitigation for this plant is to  
23 implement avoidance measures during construction  
24 principally of the gas pipeline, to avoid the  
25 plants as much as possible. And the applicant has

1       agreed to implement those avoidance measures.

2               The California condor. Since condor are  
3       known to occur in this area, and they are also  
4       known to have problems with colliding or being  
5       electrocuted by transmission lines and  
6       transmission line towers, my supplemental  
7       testimony addresses a condition that requires the  
8       applicant to put bird flight diverters on the  
9       above-ground ground wires which run along the top  
10      of the transmission line towers.

11             This is a much smaller wire than the  
12      conductors, themselves, and it is something that  
13      the condor and bald eagle and other large birds of  
14      prey could run into. So the bird flight diverters  
15      are a standard measure to be implemented in these  
16      sorts of situations when these birds are known  
17      from a project region.

18             As I mentioned the stream crossings are  
19      a critical issue for the gas pipeline project.  
20      And staff has been informed, as all of you were  
21      today, that the permit process in Fish and Game,  
22      Corps of Engineers and the Regional Water Quality  
23      Control Board are moving forward. We're happy to  
24      see that. And it's good to see that those things  
25      are being resolved.

1                   One of the issues in addition to the 37  
2           acres for the easement around the project, there's  
3           also a need for permanent habitat compensation.  
4           If you look at the numbers in my testimony,  
5           slightly more than 36 acres will be permanently  
6           impacted by the project, and 124 acres will be  
7           temporarily impacted during project construction.

8                   Using the current compensation ratios of  
9           three-to-one for permanent, and 1.1-to-1 for  
10          temporary, the grand total that the applicant will  
11          need to provide is funding to purchase no less  
12          than 245.2 acres of habitat.

13                  The total cost will need to cover not  
14          only the anticipated land purchase price, but also  
15          the setting up of a permanent endowment, and also  
16          any other closing costs that are associated with  
17          that transaction.

18                  Currently it appears that the applicant  
19          will be providing its compensation to the Center  
20          for Natural Lands Management, which is a private,  
21          nonprofit organization that we have worked with  
22          for years. The preserve that will more than  
23          likely be added to is the Low Kern Road Preserve,  
24          which other Kern County projects have all agreed  
25          to provide their compensation to. So that

1       preserve now is well over 3500 acres. So, it's  
2       growing as a result of --

3               PRESIDING MEMBER LAURIE: Let me  
4       interrupt for a moment. Are all of Mr. York's  
5       comments in his prepared testimony?

6               MR. RATLIFF: Yes.

7               PRESIDING MEMBER LAURIE: Okay. What  
8       is, in your view, the necessity to go into this  
9       detail at this time?

10              MR. RATLIFF: I think he's very near his  
11       conclusion at this point.

12              PRESIDING MEMBER LAURIE: We appreciate  
13       your comments, Mr. York, but we only have to make  
14       them once. And thus the question about  
15       redundancy.

16              MR. YORK: One of the things that's  
17       outstanding is the federal biological opinion.  
18       Now that the applicant's going through a section 7  
19       consultation with the Fish and Wildlife Service,  
20       through EPA, this should facilitate, in my  
21       opinion, getting the final marching orders from  
22       the Fish and Wildlife Service as to what the Fish  
23       and Wildlife Service thinks this project needs to  
24       do to be in compliance with the federal Endangered  
25       Species Act.

1                   So, it's my opinion -- yes?

2                   HEARING OFFICER GEFTER: I was going to  
3 ask you the timeline on the biological opinion.

4                   MS. YORK: We have Susan Jones with us  
5 here today, and representing the Fish and Wildlife  
6 Service. Susan has worked with us on this project  
7 from the beginning and she can answer your  
8 questions about that if you'd like. After my  
9 summary?

10                  It's my opinion, if all these things  
11 that I've mentioned, and some that I have left off  
12 here, if the applicant abides by these many  
13 avoidance measures and terms and conditions, the  
14 biological opinion, streambed alteration permit  
15 and all the things that are contained in those  
16 documents, if they abide by them they will be in  
17 compliance with the state and federal Endangered  
18 Species Acts and state and federal Clean Water  
19 Acts.

20                  HEARING OFFICER GEFTER: Thank you.  
21 Does that include your testimony?

22                  MR. YORK: That concludes my testimony.

23                  HEARING OFFICER GEFTER: Does applicant  
24 have cross-examination?

25                  MR. THOMPSON: We do not.

1                   HEARING OFFICER GEFTER: I'm going to  
2           have Susan Jones sworn, and ask you a few  
3           questions. And then we'll ask the intervenors if  
4           you have questions of staff's witness.

5                   Ms. Jones, would you be sworn?  
6           Whereupon,

7                               SUSAN JONES  
8           was called as a witness herein and after first  
9           being duly sworn, was examined and testified as  
10          follows:

11                              EXAMINATION

12          BY HEARING OFFICER GEFTER:

13               Q     Ms. Jones, please identify yourself and  
14           your position with the U.S. Fish and Wildlife  
15           Service.

16               A     I'm Susan Jones. I work in the San  
17           Joaquin Valley Branch, Endangered Species Division  
18           in Sacramento for the Fish and Wildlife Service.

19               Q     Thank you. And could you give us an  
20           estimate of the timeline for the completion of the  
21           biological opinion?

22               A     We have a legislated timeline  
23           requirement of 135 days from initiation. We have  
24           not received the initiation letter yet from EPA,  
25           but I do expect it within a week or so.

1                   We've been in communication with the EPA  
2                   attorney about this on a regular basis for the  
3                   last couple weeks.

4                   We have not always met our 135-day  
5                   deadline, but we will make an effort to do that.  
6                   And I think with the current state of power in  
7                   California we will be making more of an effort to  
8                   do that.

9                   HEARING OFFICER GEFTER: Thank you. Do  
10                  the intervenors have questions of either Mr. York  
11                  or Ms. Jones?

12                  CROSS-EXAMINATION

13                  BY DR. UNGER:

14                  Q     Mr. York, will the people working at the  
15                  Pastoria site be able to recognize the lily at all  
16                  times of the year, or will they just work at times  
17                  that the bloom is there?

18                  A     Part of the applicant's biological  
19                  resource mitigation implementation and monitoring  
20                  plan will be an identification of where the plant  
21                  occurs, and the avoidance measures that the  
22                  applicant will be putting into place.

23                  I do not expect that this plant will  
24                  actually be given an identification. That takes  
25                  awhile to do, it needs to be described by a



1 botanical expert in calecortis, and specimens are  
2 not currently available to begin that process.

3 And it's also something that you can't  
4 see it all year. It's primarily something you see  
5 during the blooming season. And it essentially --  
6 it's a bulb plant.

7 So as far as the applicant dealing with  
8 it, they can identify where they have found it.  
9 There will be, I assume, protective fencing put up  
10 if it's going to be anywhere near where the gas  
11 pipeline will be put. And there will be, you  
12 know, avoidance measures put in.

13 We need to talk about that with the Fish  
14 and Wildlife Service and the applicant some more  
15 as we flesh out all the fine details in their  
16 mitigation and monitoring plan. And the plan is  
17 to work after the hearings here to start that fine  
18 tuning process.

19 PRESIDING MEMBER LAURIE: Can the  
20 applicant shed any light on that question?

21 MS. KNOWLTON: There's a mitigation  
22 measure to preserve the topsoil during the  
23 construction of the pipeline. A lily was not  
24 observed, and it's unlikely to be found on the  
25 plant site in that area, because of the soil

1 types.

2 But for the pipeline route we'll be  
3 conserving the topsoil, you know, as a precaution,  
4 so that if there are bulbs in the topsoil, it will  
5 be spread back over the site.

6 So I think that's going to be the  
7 ultimate mitigation measure.

8 DR. UNGER: Mr. Rickels assumed there  
9 would be fences. Will there, in fact, be fences?

10 MS. KNOWLTON: If we find populations we  
11 will be fencing the populations off that are  
12 adjacent to the work area so that they are not  
13 disturbed.

14 DR. UNGER: And you won't be disturbing  
15 the soil until next spring anyway, so that you'll  
16 know where the populations are?

17 MS. KNOWLTON: Well, the construction  
18 for the pipeline, I think, is a nine-month  
19 construction period. And it's staged, so it's not  
20 going to all happen at once.

21 DR. UNGER: None of it that will disturb  
22 the site of the lily would happen until you get a  
23 chance to see just where the lilies are and make  
24 fences, if that's necessary?

25 MS. KNOWLTON: Right, we have an --

1 DR. UNGER: Okay.

2 MS. KNOWLTON: -- on-site monitor that  
3 is going to identify the populations and flag  
4 them.

5 DR. UNGER: Thank you.

6 COMMISSIONER MOORE: Other witnesses?  
7 Intervenors, questions?

8 MS. GRIFFIN: Yes.

9 CROSS-EXAMINATION

10 BY MS. GRIFFIN:

11 Q Mr. York, when these things go into the  
12 hopper for the 404 permit and the habitat  
13 conservation plan, apparently to two different  
14 agencies, is the California Energy Commission  
15 neutral or an advocate on these matters?

16 MR. YORK: This project will not have a  
17 habitat conservation plan.

18 MS. GRIFFIN: So that's changed?

19 MR. YORK: Yes, that's what was  
20 explained earlier.

21 MS. GRIFFIN: Okay.

22 MR. YORK: It's now a section 7  
23 consultation. All that the applicant will get  
24 through EPA is a biological opinion.

25 MS. GRIFFIN: Do you act as an advocate

1 or neutral or --

2 COMMISSIONER MOORE: That's a policy  
3 question and the answer is no, we don't.

4 MS. GRIFFIN: You don't act as an  
5 advocate?

6 COMMISSIONER MOORE: No.

7 MS. GRIFFIN: Okay.

8 BY MS. GRIFFIN:

9 Q Now, there's going to be an 11.5 mile  
10 new pipeline put in to connect with the big gas  
11 line that we heard about earlier this morning.  
12 You only have avoidance measures for that? They  
13 said it would be 71 acres of temporarily disturbed  
14 land, but there's no other mitigation?

15 MR. YORK: Yes, there is mitigation.  
16 There are actually, the project will have a total  
17 of 124 acres of temporary disturbance, --

18 MS. GRIFFIN: Of temporary --

19 MR. YORK: -- compensated at 1.1-to-1,  
20 and that adds to the total of habitat compensation  
21 that the applicant has already agreed to provide.

22 MS. GRIFFIN: So that's the one in the  
23 final staff assessment on the page 345 -- it  
24 wasn't clear that the temporary -- I'll see if  
25 I've got my -- no, I'm wrong, I'm wrong.

1                   There was a chart and it wasn't clear  
2                   that the 11.5-mile pipeline, if there was any  
3                   compensation because --

4                   COMMISSIONER MOORE: I think, Mr. York,  
5                   your answer is that it's included in the overall  
6                   mitigation.

7                   MR. YORK: Definitely.

8                   MS. GRIFFIN: Okay, now on page 202 of  
9                   the preliminary staff report there was a footnote  
10                  that said that the staff and the applicant didn't  
11                  agree on the acres for drainage.

12                  And was that matter cleared up?

13                  MR. YORK: Yes, in my PSA I identified  
14                  that there were some discrepancies in the numbers,  
15                  and we worked those numbers out and --

16                  COMMISSIONER MOORE: How were they  
17                  cleaned up, Mr. York?

18                  MR. YORK: One of the changes was that  
19                  the access road was not as wide as originally  
20                  identified, so that made a change.

21                  And I forget where the other one, other  
22                  change --

23                  COMMISSIONER MOORE: They're resolved to  
24                  staff's satisfaction?

25                  MR. YORK: Definitely.

1 COMMISSIONER MOORE: And that's  
2 reflected in the final?

3 MR. YORK: Yes, the numbers I have in my  
4 FSA are what I'm very comfortable with.

5 COMMISSIONER MOORE: Thank you. Other  
6 questions?

7 MS. GRIFFIN: No, no more questions.

8 COMMISSIONER MOORE: Thank you. Any  
9 redirect from staff?

10 MR. RATLIFF: No.

11 COMMISSIONER MOORE: And I'm sorry, Mr.  
12 Thompson?

13 MR. THOMPSON: I have one question --

14 HEARING OFFICER GEFTER: Cross-  
15 examination --

16 MR. THOMPSON: -- I'd like to ask our  
17 witness.

18 REDIRECT EXAMINATION

19 BY MR. THOMPSON:

20 Q Ms. Knowlton, with regard to the  
21 testimony of Mr. York on the condors and the  
22 flight diverters, do you agree completely with  
23 staff on those issues?

24 A I think I just have some clarifications.  
25 The range of the condor is at the extreme end of

1 the range, and so to clarify the bird flight  
2 diverters aren't solely for the condors, they're  
3 for all large birds, raptors.

4 And it just so happens that a condor is  
5 a large bird, and the bird flight diverters would  
6 also divert them if they were there. It's at the  
7 very edge of their range, and they are extremely  
8 unlikely to be there.

9 I just wanted to make sure that that was  
10 clear.

11 MR. THOMPSON: Thank you, that's all we  
12 have.

13 HEARING OFFICER GEFTER: Okay, now we  
14 will take public comment. If you'd like to speak  
15 up so everyone can hear you.

16 COMMISSIONER MOORE: Sir, you'll have to  
17 come forward --

18 HEARING OFFICER GEFTER: Come forward.

19 COMMISSIONER MOORE: -- so we can get  
20 your comments.

21 HEARING OFFICER GEFTER: And please  
22 identify yourself and --

23 MR. FOX: Yeah, I'm Dennis Fox --

24 HEARING OFFICER GEFTER: You have to --

25 MR. FOX: -- I live in Bakersfield and

1 the questions I have, one is on biological. You  
2 state the exotic controls and you've looked at the  
3 exotic controls specifically in this area would be  
4 mainly plants. Would you have wheel baths and  
5 cover crops in the plan?

6 PRESIDING MEMBER LAURIE: Let's hold up  
7 for a moment. Sir, do you have a statement or a  
8 comment or do you have a --

9 MR. FOX: Well, that was a comment, it's  
10 something to look at.

11 The other one is that I will give you a  
12 comment and it has to do with the stream  
13 alteration permit that just came around. And  
14 there was -- I was wondering if you were  
15 coordinated with the County of Kern, which did a  
16 uncoordinated resource management plan, because it  
17 had no stakeholders, and it had no agency  
18 involvement. And there are 44 projects along  
19 stream alterations.

20 If you are coordinated with that, or if  
21 you are taking a second look as to whether you  
22 would want to be coordinated with that process  
23 down there. Or if you're aware of it. And it  
24 would be to the applicant.

25 MR. YORK: The only streambed alteration



1 permit that's required is the one from the  
2 Department of Fish and Game. And the applicant  
3 has met with the Fish and Game, and in fact they  
4 were in the field with them yesterday to look at  
5 the gas pipeline, which is the area where the  
6 streambed alteration permit principally will be an  
7 issue. And that permit is moving forward in  
8 coordination with the Department of Fish and Game.

9 MR. FOX: That's not exactly what I  
10 meant. What I meant is that the County has its  
11 own little bureaucratic buffoonery going on, a  
12 very bizarre plan for that area. And I was  
13 thinking, are you aware of that?

14 MR. YORK: I was not aware.

15 MR. FOX: Not at all? Maybe you would  
16 like to -- generally I'd say you should coordinate  
17 with it, but in this situation you may wish to not  
18 be a part of it.

19 It is a massive flood -- there are 44  
20 projects going on in that area. I was wondering  
21 if -- without permits -- and I was wondering if  
22 you were coordinated with that, or if you wished  
23 to stay away from it.

24 HEARING OFFICER GEFTER: Well, sir, the  
25 witness said he wasn't aware of that --

1                   MR. FOX: Yeah, I was thinking you may  
2 wish to --

3                   HEARING OFFICER GEFTER: -- and so when  
4 we go off the record perhaps you can have a  
5 conversation with him about it.

6                   MR. FOX: Yes, I think I would like to.

7                   HEARING OFFICER GEFTER: Do you have any  
8 additional comment?

9                   MR. FOX: On this subject, maybe on the  
10 biology, I'm interested in the water aspects.

11                  HEARING OFFICER GEFTER: That will be  
12 next.

13                  MR. FOX: Yeah.

14                  HEARING OFFICER GEFTER: Thank you very  
15 much for your comments.

16                  MR. FOX: Thank you.

17                  HEARING OFFICER GEFTER: As there are no  
18 further questions of the witnesses, the witnesses  
19 may be excused.

20                  And our next topic is water.

21                  MR. THOMPSON: Thank you. Applicant  
22 filed in exhibit 38 the testimony of Phil Mineart  
23 without a declaration under the belief that he  
24 would be able to attend. What we have, and I  
25 apologize for not distributing it earlier, is an

1 exact copy of the testimony previously submitted  
2 with the declaration attached.

3 And I would ask whether you want that as  
4 a new exhibit, or just replace a new exhibit 38?

5 HEARING OFFICER GEFTER: I would replace  
6 it into exhibit 38. It's just a correction to  
7 exhibit 38.

8 MR. THOMPSON: That's correct.

9 HEARING OFFICER GEFTER: That's fine,  
10 thank you.

11 MR. THOMPSON: Applicant would like to  
12 call Mr. Sam Wehn. And while Mr. Wehn is getting  
13 ready, for the benefit of the public, Mr. Wehn is  
14 responsible for the water plan. Mr. Mineart,  
15 whose testimony is going in by declaration, did  
16 the early work in the AFC.

17 Mr. Wehn has been previously sworn.

18 DIRECT EXAMINATION

19 BY MR. THOMPSON:

20 Q Would you please state your name and  
21 place of employment for the record?

22 A My name is Sam Wehn and I work for Enron  
23 North America Corp.

24 Q Would you please briefly describe the  
25 applicant's water plan for the Pastoria project.

1           A     Our primary water supply is going to be  
2     provided by Wheeler Ridge/Maricopa Water District.  
3     And it is going to be water that has turned back  
4     from their primary constituents, or the members of  
5     the Wheeler Ridge District.

6                     That turned back water means that the  
7     primary members will have first priority on the  
8     use of that water. In the event that they do not  
9     have a need, they will turn it back for resale.  
10    And it is our desire to buy everything up to the  
11    quantities we've specified for meeting our  
12    requirements on the project site.

13                    In the event that they cannot provide  
14    sufficient quantities to our facility, we have  
15    contracted with West Side Mutual to provide us  
16    with 40,000 acrefeet of backup water supply.

17                    And we have a company called Azurix that  
18    is going to be providing overall management of the  
19    water program for this facility.

20           Q     Thank you, Mr. Wehn.

21                   MR. THOMPSON: Mr. Mineart, whose  
22    testimony is going in by declaration, is  
23    sponsoring exhibit 1, section 5.5 and appendix N,  
24    and Mr. Wehn is sponsoring exhibits 20, 23, 24,  
25    26, 28 and I would ask that those exhibits be

1 moved into the record at this time.

2 HEARING OFFICER GEFTER: Any objection,  
3 staff?

4 MR. RATLIFF: No.

5 HEARING OFFICER GEFTER: Intervenors?

6 MS. GRIFFIN: No.

7 HEARING OFFICER GEFTER: Exhibits 20,  
8 23, 24, 26 and 28 are now admitted into the  
9 record.

10 MR. THOMPSON: Thank you very much. Mr.  
11 Wehn is tendered now for cross-examination on the  
12 area of water.

13 EXAMINATION

14 BY HEARING OFFICER GEFTER:

15 Q Question, Mr. Wehn, before we begin  
16 cross-examination. You indicated that Azurix is  
17 going to oversee the water plan. Could you tell  
18 us exactly what that means?

19 A Well, what that means is that as a  
20 facility, the facility operator will be sending  
21 their requirements to the Azurix Corporation.  
22 Azurix will then be coordinating with Wheeler  
23 Ridge. And if they are unable to provide the  
24 water from Wheeler Ridge, they will then provide  
25 the water through the backup water source.

1           Q     And is there a reliable source -- the  
2     way you described it is, my understanding is that  
3     Wheeler Ridge will provide you all the water that  
4     is turned back. Is there sort of a regular amount  
5     that you're counting on?

6           A     We feel, from looking at the statistics  
7     over the last 30 years, that there will be ample  
8     supplies for us to operate our facility to the  
9     quantities that we have described, which is 3900  
10    acrefeet per year.

11           HEARING OFFICER GEFTER: Does staff have  
12    cross-examination of the witness?

13           MR. RATLIFF: No.

14           HEARING OFFICER GEFTER: Intervenors, on  
15    water.

16                   CROSS-EXAMINATION

17    BY DR. UNGER:

18           Q     Mr. Wehn, will the facility consume  
19    entirely 5000 acrefeet of water a year?

20           A     It could potentially consume up to that  
21    quantity.

22           Q     It will get the water in legal means,  
23    you've made that plain. But where will the State  
24    of California get the water? Will we take it away  
25    from agriculture, from domestic use? You know,

1       there's only so many raindrops that fall here.

2       Where are we going to get the 5000 acrefeet?

3             A     As I described, the farmers, the  
4       agriculture and the members of the Wheeler Ridge  
5       District will have first priority.  If they so  
6       choose not to use their allocation, then we will  
7       then purchase that which they do not use.

8             Q     So they'll be cutting down on their  
9       production of crops in order to provide for the  
10      facility?

11            A     I think that's being presumptuous,  
12      you're presuming something that may not occur.

13            Q     Somebody got to find 5000 acrefeet from  
14      somewhere, don't they?

15            A     I think the best way to describe it is  
16      look at history, and look at the usage by the  
17      members of the Wheeler Ridge District.  And I  
18      think from that you will be able to conclude that  
19      all of their water that they have under  
20      entitlement is not being used on an annual basis.

21            Q     We're talking about two different  
22      things.  You're talking about it's legally able to  
23      get the water, and I'm talking about -- I will ask  
24      you, do you think the State of California has  
25      plenty of water?

1           A     I think that question should be directed  
2           to the Department of Water Resources. They can  
3           answer that for you better than I can.

4           Q     Thank you.

5                   HEARING OFFICER GEFTER: Ms. Griffin?

6                   MS. GRIFFIN: No questions for Mr. Wehn.

7                   HEARING OFFICER GEFTER: Staff, would  
8           you present your witness on water.

9                   MR. RATLIFF: Staff witness is Lorraine  
10          White. She needs to be sworn.  
11          Whereupon,

12                   LORRAINE WHITE  
13          was called as a witness herein and after first  
14          being duly sworn, was examined and testified as  
15          follows:

16                   DIRECT EXAMINATION

17          BY MR. RATLIFF:

18                 Q     Ms. White, did you prepare the staff  
19          portion of the FSA entitled soil and water  
20          resources?

21                 A     Yes, I did.

22                 Q     Is that testimony true and correct to  
23          the best of your knowledge and belief?

24                 A     Yes, it is.

25                 Q     Could you summarize it briefly?



1           A     Sure. In my testimony I focused on  
2     whether or not the proposed project has the  
3     potential to induce erosion and sedimentation  
4     which could have an adverse effect on water  
5     quality.

6                     I looked at water supplies and the  
7     potential for other components of the project to  
8     have an adverse effect on water quality.

9                     The project, as it was proposed,  
10    essentially led me to focus primarily on the water  
11    supply, and on erosion control. And that is  
12    because the liquid process wastewater is going to  
13    go through a zero waste discharge system, which  
14    results in no offsite liquid discharge to any  
15    recipient.

16                    That process will result in water being  
17    made available for recycle within the process of  
18    the facility and a solid cake product at the end,  
19    which must be managed through traditional waste  
20    management requirements.

21                    In terms of the erosion control I  
22    focused on primarily the natural gas pipeline.  
23    The territory in which it's proposed to cross had  
24    some areas of concern, primarily steep slopes and  
25    passing through various creek and drainage

1 waterways.

2 And also the site design, we want to  
3 make sure that the storm water runoff is managed  
4 appropriately.

5 I reviewed their plans and found the  
6 proposal to be acceptable, and that the very well  
7 likelihood of any kind of impacts, and those  
8 impacts that would likely occur, appropriate  
9 mitigation has been proposed for.

10 In terms of the water supply, the  
11 project is looking at consuming, as Mr. Wehn has  
12 indicated, approximately 3900 acrefeet a year.  
13 With peak summer demands on the order of about  
14 4300 gallons per minute.

15 The primary source is essentially excess  
16 water within the Wheeler Ridge/Maricopa Water  
17 Storage District system. Its customers that are  
18 not able to use the water they're allocated have  
19 the opportunity to resale that water through the  
20 District's pool program. It allows them to recoup  
21 losses they would otherwise experience. It's a  
22 process that's been going on for some time.

23 Essentially the current recipients of  
24 the water, the primary recipients of the water  
25 through the District, try to find whoever they can

1       sell the water to as a standard procedure, a  
2       normal process here in the area.

3               The secondary source is essentially  
4       40,000 acrefeet of banked groundwater in the Kern  
5       water bank. I have with me Scott Hamilton, who is  
6       Director of the Kern Water Bank Authority, and is  
7       also associated with the West Side Mutual Water  
8       Company. And I asked him to be available to  
9       answer any detailed questions you might have about  
10      specific operational procedures or practices that  
11      the Bank employs.

12             This banked groundwater is actually part  
13      of quite a bit of groundwater that West Side  
14      Mutual has banked over time. It is essentially a  
15      program that has been established to supplement  
16      State Water Project water when resources are not  
17      adequate in terms of surface water in the aqueduct  
18      to accommodate all the needs. Essentially it's  
19      the State Water Project's own backup supply.

20             There is quite a bit that has been  
21      banked over the years and documented. They  
22      anticipate they'll reach approximately a million  
23      acrefeet within the next few years of resources  
24      that can be made available when surface water  
25      supplies through the State Water Project are not

1       adequate.

2               The 40,000 acrefeet will essentially,  
3       the way the contract is written, a maximum of 5000  
4       acrefeet, which is well in excess of their  
5       estimates for an annual peak demand anyway. And  
6       that would allow them to have backup supply in the  
7       extent of an excessively prolonged drought period.  
8       In my estimation, eight years, easily.

9               The proposal doesn't necessarily  
10      anticipate that they actually pull that water out  
11      of the ground. The hope is that they rather  
12      exchange or transfer that right underground for  
13      real surface supplies that can be conveyed to the  
14      project through the aqueduct, and then to the  
15      Wheeler Ridge/Maricopa turnout facilities.

16              I've reviewed the documentations.  
17      There's extensive environmental review and CEQA  
18      documents associated with the Kern Water Bank.  
19      And procedures established to address the  
20      operating criteria, monitoring programs, any kind  
21      of dispute resolution and the mitigation of any  
22      potential impacts, if and when they do result.  
23      And I found that all to be essentially very  
24      thorough. I could not come up with anything else  
25      that would do a better job, and felt that it would

1 be adequate to protect the resources and insure  
2 that no significant adverse impacts result.

3 I have in the off-chance that the  
4 proposal, as the applicant has put forth, does not  
5 result in adequate supplies, that any modification  
6 to their supply plan would then have to come back  
7 to the Commission. But I anticipate that would be  
8 several years at the earliest, in the future. And  
9 what options for addressing those lacks of supply  
10 are too speculative to guess at this point. And I  
11 couldn't analyze that.

12 Q Does that conclude your testimony?

13 A Yes.

14 MR. RATLIFF: The witness is available  
15 for questions.

16 MR. THOMPSON: Applicant has no  
17 questions.

18 DR. UNGER: No.

19 HEARING OFFICER GEFTER: Do you have  
20 questions?

21 CROSS-EXAMINATION

22 BY MS. GRIFFIN:

23 Q Lorraine, the Kern Water Bank and the  
24 Maricopa/Wheeler Ridge Water Storage District,  
25 what essentially is their business? What's their

1 essential business?

2 A To supply water to their customers.

3 Q Well, I would disagree. To sell water  
4 to customers, right?

5 A Well, actually in some instances you  
6 have the District operating the system on behalf  
7 of the true entitlement holders. So, in terms of  
8 the Kern Water Bank, they actually function for  
9 those that truly have the entitlements to the  
10 water within their program.

11 So it's not them reselling to folks who  
12 have already bought the water; it's them supplying  
13 the water to their constituents.

14 Q Well, but they're selling water. If you  
15 were in their position and you had a farmer or an  
16 oilman building one of these power plants who had  
17 to supply energy 24 hours a day to the people of  
18 California, who do you suppose would be your  
19 steadiest customer?

20 HEARING OFFICER GEFTER: Well, I would  
21 -- that's not a -- that's a question of  
22 speculation, and it's not necessarily relevant to  
23 this --

24 MS. GRIFFIN: Ms. Gefter, these power  
25 plants going in in Kern County are a little

1 controversial about selling the water to them,  
2 because they're taking away from farmers, on  
3 paper, they're taking away from farmers.

4 Now, my only point is if I were running  
5 in charge of a water storage district, of course  
6 I'd want to look for somebody who had to work 24  
7 hours a day rather than a farmer who is subject to  
8 weather and market forces and whatever.

9 Thank you. I have no more questions.

10 HEARING OFFICER GEFTER: Thank you.

11 EXAMINATION

12 BY HEARING OFFICER GEFTER:

13 Q I have a question regarding the Monterey  
14 Agreement.

15 A Yes, ma'am.

16 Q Can you tell us whether that -- the  
17 Committee will take administrative notice of the  
18 Monterey Agreement. If you would tell us about  
19 the conservation measures that are included in the  
20 agreement, summarize very quickly?

21 A Well, the specifics related to the  
22 conservation portions of the Monterey Agreement  
23 that pertain to this project and the Kern Water  
24 Bank I'd actually defer to either Gary or to  
25 Scott.

1           The over-arching Monterey Agreement  
2       addressed conservation in terms of all of the  
3       contractors, and something that specifically deals  
4       with Kern County and the Kern Water Bank I think  
5       they'd be better to address in how they're dealing  
6       with that.

7           HEARING OFFICER GEFTER: All right. I'd  
8       ask you to identify yourselves for the record and  
9       then be sworn.

10           MR. HAMILTON: I'm Scott Hamilton with  
11       West Side Mutual Water Company.

12           MR. BUTCHER: I'm Gary Butcher with Kern  
13       County Water Agency.  
14       Whereupon,

15           SCOTT HAMILTON and GARY BUTCHER  
16       were called as witnesses herein and after first  
17       being duly sworn, were examined and testified as  
18       follows:

19                           EXAMINATION

20       BY HEARING OFFICER GEFTER:

21           Q     I'd like to ask you a question, either  
22       one of you, about the conservation measures that  
23       are built into the Monterey Agreement, because  
24       questions have been raised by the public about  
25       whether the water could be better used elsewhere,



1       and whether it might impact the availability of  
2       water of the State of California.

3               So I would, I think, for the record tell  
4       us a bit about the measures that are included in  
5       the Monterey Agreement.

6               MR. BUTCHER: Do you want me to do that,  
7       or --

8               MR. HAMILTON: Let me start and you can  
9       add.

10              MR. BUTCHER: All right.

11              MR. HAMILTON: First of all there's a  
12       little bit of ambiguity about the source of the  
13       water. The question's being asked as to whether  
14       or not this water was, you know, surplus to other  
15       needs in California.

16              Wheeler Ridge's water supply, they have  
17       contracted for more water than they need on  
18       average, so that in a water shortage they can meet  
19       their requirements.

20              So in average and above-average years  
21       they have more water than what they can use. And  
22       this is water that would have otherwise flowed out  
23       the delta. It would have just been lost to  
24       California. So, that's why it's not competing  
25       with any other source of water in California.

1           The backup sources of water supply, when  
2       the source from Wheeler Ridge is not available,  
3       that source is coming from the -- through West  
4       Side Mutual Water Bank. That water is either  
5       water that would have also flowed out the delta;  
6       it's taken during the high flow periods and stored  
7       in the water bank. Or it's flood water off the  
8       Kern River and other east side streams here.

9           That water typically would have flowed  
10      down into Tulare Lake Basin and flooded farmland  
11      there. So this is water that we're essentially  
12      using it and putting it in the water bank and  
13      preventing flooding of farmland.

14           So, in either case we're not competing  
15      with other sources of water in California.

16           When we built the Kern Water Bank we had  
17      anticipated that we would preserve a portion of it  
18      to meet third party uses, and that third party use  
19      was in excess to our own needs. So we've met our  
20      own needs first, and then we're using this third  
21      party capacity to help fund the project.

22           HEARING OFFICER GEFTER: Sir, do you  
23      have anything else to add?

24           MR. BUTCHER: That was a pretty good  
25      answer, I thought.

1 HEARING OFFICER GEFTER: Thank you.

2 MR. BUTCHER: Yeah, I guess I was going  
3 to ask what you meant by conservation. These days  
4 conservation usually means don't use the water.  
5 And I think what Scott was talking about is in the  
6 sense of the water bank is we're conserving water  
7 that would otherwise be unusable. So we're using  
8 the word conservation to mean we found a way to  
9 conserve water, i.e., store it so that it can be  
10 used.

11 Generally the secret to water in  
12 California is there's plenty of it, it's just not  
13 where you want it when you want it. And the  
14 secret here is we've got a facility that is able  
15 to capture winter, high flow, wet floodwaters and  
16 store it for future use. And as Scott said, the  
17 participants in this bank put their own needs  
18 first, the farmers, the local agencies, those  
19 needs have to be met first. And they always  
20 envisioned extra capacity for third party uses  
21 like this one, and there will be others.

22 HEARING OFFICER GEFTER: Question  
23 regarding other power plants in Kern County. Are  
24 those plants also drawing water from the Kern  
25 County Water Bank?

1                   MR. BUTCHER: I'm aware of the LaPaloma  
2                   plant in West Kern. West Kern Water District has  
3                   an existing water banking arrangement in  
4                   partnership with Buena Vista Water Storage  
5                   District. It's in the same general area as the  
6                   water bank. It's actually been in existence for  
7                   probably over 20 years. And the backup supply for  
8                   that plant will come from that banking program.

9                   HEARING OFFICER GEFTER: Separate from  
10                  your program?

11                  MR. BUTCHER: Yes.

12                  HEARING OFFICER GEFTER: Thank you. All  
13                  right, do you have any questions? Okay.

14                  Thank you very much. Does staff have  
15                  any redirect of your witness?

16                  MR. RATLIFF: No.

17                  HEARING OFFICER GEFTER: The witnesses  
18                  may be excused. Thank you.

19                  MS. GRIFFIN: Wait --

20                  HEARING OFFICER GEFTER: You had a  
21                  question?

22                  DR. UNGER: May we have some questions  
23                  of the witness?

24                  HEARING OFFICER GEFTER: Sure.

25                  //

1 CROSS-EXAMINATION

2 BY DR. UNGER:

3 Q You said that California has plenty of  
4 water, it's not where you want it when you want  
5 it.

6 A Correct.

7 Q Are you aware that some people in  
8 California would like to restore the salmon  
9 fisheries we enjoyed a half century ago?

10 A Absolutely.

11 Q Plenty of water for salmon?

12 A Sure is.

13 Q We can start flowing the water down the  
14 San Joaquin River --

15 A Sure you can.

16 Q -- and restore the salmon?

17 A As long as you -- if you don't build  
18 additional facilities, if you do that then some  
19 water user is going to have less water. So, right  
20 now, we're at the limit of our facilities. And  
21 what we struggling with is water for the  
22 environment versus water for the economy, i.e.,  
23 people.

24 And the dilemma we face and have faced  
25 for many many years is until you do something in

1 terms of additional facilities, either for the  
2 environment or for the water users, then you start  
3 fighting over a limited resource. And quite  
4 frankly, the majority of the water in California  
5 leaves the state through the delta into the ocean.  
6 We only capture and use a fraction of that amount  
7 of water annually.

8 Q We capture and use 43 million acrefeet  
9 of water, as a matter of fact, do we not?

10 A Not the water users, no.

11 Q Yes, I --

12 A I'm thinking in terms of our projects,  
13 the state and federal projects. Those two  
14 combined typically will use 4 to 5 million  
15 acrefeet a year in those two projects, which  
16 together serve over 20 million people statewide.

17 The outflow out of the delta annually is  
18 on average 20 million acrefeet or more.

19 Q Do the 34 million people in California  
20 use 43 million acrefeet of water a year?

21 A I am not familiar with that figure.

22 Q In wet years the water does flow out to  
23 the delta. Is there a problem in the delta of  
24 salt intrusion?

25 A Yeah, and it will be --

1                   PRESIDING MEMBER LAURIE: Gentlemen, the  
2                   Committee will deem that question irrelevant.  
3                   Please do not answer.

4                   DR. UNGER: We've been told that there's  
5                   plenty of water in California. We just don't have  
6                   it where you want it.

7                   PRESIDING MEMBER LAURIE: Well, that --

8                   DR. UNGER: I submit that there's a  
9                   water shortage in California and that the 5000  
10                  acrefeet that this project will use could well be  
11                  used many places, including recharging the Kern  
12                  Water Bank.

13                  PRESIDING MEMBER LAURIE: And that's  
14                  also within the discretion of the District, okay.  
15                  Thank you. Please ask your additional questions.

16                  DR. UNGER: That's my point.

17                  PRESIDING MEMBER LAURIE: Thank you.

18                  HEARING OFFICER GEFTER: Ms. Griffin, do  
19                  you have questions?

20                               CROSS-EXAMINATION

21                  BY MS. GRIFFIN:

22                  Q     Mr. Butcher, did the Kern County Water  
23                  Agency have any consultations or meetings,  
24                  discussions, will-serve letters with that new  
25                  project over the hill in Valencia?

1                   HEARING OFFICER GEFTER:  What's the  
2                   relevance -- I'm sorry, what's the relevance of  
3                   that?

4                   MS. GRIFFIN:  Who are they selling water  
5                   to.

6                   HEARING OFFICER GEFTER:  But that's not  
7                   relevant to the information they provided us --

8                   MS. GRIFFIN:  I think it might be  
9                   relevant to the supplies, the possible future  
10                  supplies.

11                  HEARING OFFICER GEFTER:  Can you answer  
12                  her question?

13                  MR. BUTCHER:  We have talked to the  
14                  water district that serves Newhall.

15                  MS. GRIFFIN:  Thank you.

16                  HEARING OFFICER GEFTER:  Is there public  
17                  comment on the question of water?  Would you come  
18                  forward to a microphone, please.

19                  MR. FOX:  Yes, once more, I'm Dennis  
20                  Fox.

21                  Once again I would caveat that this  
22                  project does not become a victim of upstream  
23                  erosional forces.  Mainly is that if there's any  
24                  basins in up there they will fill in, because  
25                  we've had flooding from no maintenance of those



1 before, entire towns out here.

2 And I'm not going to get into what event  
3 you've designed -- what your designed event is  
4 for, but consider a ten-year event will fill up  
5 these. There will be no maintenance. So the next  
6 ten-year event, assume that you will have scour  
7 and it will impact the site. And something, I  
8 think, that you really should be taking a look at.  
9 Not as impacts that you cause, but perhaps impacts  
10 that would be caused secondarily because you're  
11 going to receive them.

12 The other thing is, you know, as these  
13 basins that are full scour out, thermal effects,  
14 and I wasn't going to get into whether -- I don't  
15 think they're always detrimental -- I believe from  
16 what I've seen that they would be benign. I  
17 believe that you might want to take a look at,  
18 since you will be using no ponding, which can be a  
19 benefit, will there be any benefits if any  
20 discharge back into the aqueduct of any heat? No  
21 heat, no heat discharge. I was thinking, well,  
22 there goes the improvement of the bass fishing at  
23 Pyramid Lake. That's all right, though.

24 Okay, and downstream fog. Sometimes fog  
25 isn't looked into. Looking at another site

1       farther north that sometimes heat, we have a tule  
2       fog. And if there would be any impacts on tule  
3       fog. I think you should get the ducks in a row on  
4       that.

5               And make sure that there are no thermal  
6       effects on site, downstream and from the air, you  
7       know, ambient tule fog. And I think once that's  
8       cleared up -- thank you.

9               HEARING OFFICER GEFTER: Thank you.

10              MR. THOMPSON: Thank you.

11              HEARING OFFICER GEFTER: The witnesses  
12       on water may be excused, thank you.

13              (Pause.)

14              PRESIDING MEMBER LAURIE: We'll take our  
15       lunch break and be back here at 12:45, we will  
16       reconvene. Thank you.

17              (Whereupon, at 11:45 a.m., the hearing  
18       was adjourned, to reconvene at 12:45  
19       p.m., this same day.)

20                       --o0o--

21

22

23

24

25

1 AFTERNOON SESSION

2 12:50 p.m.

3 HEARING OFFICER GEFTER: We're going to  
4 continue on the topic of air quality. Since the  
5 applicant's witness is not here at this time,  
6 she's in transit, we're going to ask staff to  
7 present your witness first.

8 MR. RATLIFF: The staff witness is Magdy  
9 Badr. He hasn't been sworn.  
10 Whereupon,

11 MAGDY BADR  
12 was called as a witness herein and after first  
13 being duly sworn, was examined and testified as  
14 follows:

15 DIRECT EXAMINATION

16 BY MR. RATLIFF:

17 Q Mr. Badr, did you prepare the portion of  
18 the final staff assessment entitled air quality?

19 A Yes, I did.

20 Q Do you have any changes to make in that  
21 testimony?

22 A No, I do not.

23 Q Is it true and correct to the best of  
24 your knowledge and belief?

25 A Yes.

1 Q Could you summarize it briefly?

2 A Sure. In analyzing the Pastoria Energy  
3 Facility staff looked at what is the expected air  
4 quality impacts of the criteria pollutants that  
5 will come out from this facility.

6 Criteria pollutants, as you're going to  
7 hear, some of it or all of them, and the acronyms  
8 are nitrogen dioxide NO2, sulfur dioxide SO2,  
9 carbon monoxide CO, ozone O3, and PM10, which is  
10 particulate matters less than 10 microns in  
11 diameter.

12 In carrying out this analysis we had to  
13 make evaluation of whether Pastoria project is  
14 likely to confirm with the applicable rules and  
15 regulations for federal, state and local air  
16 quality management district, in this case, San  
17 Joaquin Valley Unified Air Quality Management  
18 District. All their ordinance and regulations and  
19 standards under Title 20, California Code of  
20 Regulations 1744. And whether the PEF is likely  
21 to cause any significant air quality impacts,  
22 including new violations of the ambient air  
23 standards, or contributing to the existing  
24 violations of those standards.

25 And whether the mitigation as proposed

1 by the applicant is adequate to lessen the  
2 potential of the impact, as required by Title 20.

3 In doing all that we found that the  
4 project is in compliance with all rules and  
5 regulations. And we have addressed them in my  
6 testimony as part of the FSA.

7 And we concluded that given the FDOC has  
8 been issued, or the final determination of  
9 compliance of the District has been issued, we  
10 agreed with it.

11 We incorporated their conditions and our  
12 conditions, and we added certain conditions to be  
13 implemented during the construction phase of the  
14 project, as CEQA will ask us to do.

15 And those are under AQC-1, AQC-2, and  
16 AQC-3. And to the best of my knowledge, the  
17 project doesn't have an adverse impact on public  
18 health from the criteria pollutant.

19 Now, in my opening presentation I would  
20 like to address a major issue which came up during  
21 the course of this project, which is the ammonia  
22 issue.

23 The applicant is proposing 10 ppm to be  
24 emitted from that project, that's called an  
25 ammonia slip. That means in the SCR -- let me

1 back up one step -- the preferred technology for  
2 this project is Xonon.

3 Xonon technology does not require  
4 ammonia. So, if everything goes well, Xonon would  
5 be on the project and the ammonia issue will  
6 disappear.

7 Now, because it's a very new technology,  
8 don't know much about it yet, if it going to work  
9 or not on very large projects like that, because  
10 it's not implemented anywhere else we know about,  
11 the applicant, as a backup, is proposing to put an  
12 SCR.

13 The SCR will require ammonia to be  
14 injected in, and in that process will be some of  
15 the ammonia is not going to be reacted with the  
16 NOx to reduce it. It will come out from the stack  
17 as ammonia slip.

18 Now the maximum that's allowed is 10 ppm  
19 on similar projects like these ones has been  
20 already been permitted and been in operation in  
21 Sacramento and Crockett. They emit around 1, 2 or  
22 3 ppm. So it's very achievable, the 10 ppm, we  
23 don't think -- this is worst case scenario -- we  
24 do not think they going to achieve that, or are  
25 going to come to that level. Normally it's under

1 the 2 or 3 ppm.

2 Even with the 10 ppm, which is regulated  
3 under, this other projects came in the area like  
4 Elk Hills, LaPaloma and Sunrise projects. Those  
5 are power plants been permitted here in Kern  
6 County. And we have been -- the Commission  
7 permitted them under at 10 ppm ammonia slip.

8 The area of this project is agriculture  
9 and dairy products, there's a lot ammonia up in  
10 the air. And to say the least, it's saturated  
11 with ammonia. Adding 10 ppm for this project, if  
12 that happens, is not going to be a significant  
13 addition to the background environment.

14 The dangerous comes from air quality  
15 standpoint, from the ammonia slip is when ammonia  
16 is combined with NOx to give you a secondary PM10,  
17 and that's what we really try to analyze.

18 Ammonia, by itself, it's a public health  
19 issue; and I think that's been addressed in the  
20 public health section. However, from air quality  
21 point of view if you have two agents, which is NOx  
22 and ammonia, it gives you that ammonia nitrate.  
23 And that's the secondary PM10 associated with the  
24 ammonia.

25 The applicant is mitigating all NOx for

1       this project, and is mitigating all PM10 from this  
2       project using NOx, because PM10, itself, is very  
3       scarce around. So he's providing a very  
4       significant amount of emissions, NOx emissions, to  
5       be excluded from the air. So the chances that the  
6       ammonia will combine with the NOx to create  
7       secondary PM10 is small one because the NOx is  
8       mitigated.

9               The reason I put this in my again  
10       opening testimony because there was a lot of  
11       questions about this, and I hope I answered a lot  
12       of these questions in my statement.

13           Q     Mr. Badr, to be clear, the project will  
14       be given a limit in the DOC, there is a limitation  
15       on ammonia slip of 10 ppm?

16           A     That's correct.

17           Q     And you expect the facility to actually  
18       emit how much?

19           A     Much less than that. Normally it's  
20       around 2 or 3 if I'm very conservative.

21           Q     Okay. Thank you.

22               MR. RATLIFF: I have no other questions,  
23       the witness is available.

24               HEARING OFFICER GEFTER: Applicant, do  
25       you have cross?



1 MR. THOMPSON: We do not, thank you.

2 HEARING OFFICER GEFTER: Intervenors.

3 DR. UNGER: Thank you.

4 CROSS-EXAMINATION

5 BY DR. UNGER:

6 Q You said, Mr. Badr, that the local air  
7 is pretty well saturated with ammonia.

8 A Yes, there was some studies to that  
9 effect when LaPaloma project was within the  
10 process of getting permitted. And the staff found  
11 that the impact of the 10 ppm is not going to add  
12 any significant impact on the ambient air.

13 Q In general, with environmental things we  
14 always talk about cumulative impacts. If  
15 something is 10 percent of the problem, we still  
16 try to cut it down even if it's only 10 percent of  
17 the problem, or even 1 percent of the problem.

18 You've already discussed how you're  
19 trying to cut down ammonia, so I think I can get  
20 off that topic.

21 Except that in your thoughts about  
22 ammonia you've taken into consideration the new  
23 knowledge that I think is around that catalytic  
24 converters generate ammonia, so as saturated as  
25 we'll be, we'll become more saturated?

1           A     No, sir. That would be an ammonia slip  
2     which is the amount of ammonia has not reacted in  
3     the catalyst.

4           Q     No, I mean we're saying that the San  
5     Joaquin Valley is saturated with ammonia. I'm  
6     wondering how critical that is, how critical even  
7     the tiny bit of slip from the plant would be  
8     because we have several plants, so we have several  
9     sources of slip. Then we have lately, in my  
10    learning, lately learned that automobile catalytic  
11    converters are a major source of ammonia.

12                   Did you take the automobile catalytic  
13    converters in your mind when you said the plant  
14    won't harm public health?

15           A     I did not look at mobile offsets or  
16    mobile emissions as a source. We looked at  
17    stationary sources. The 10 ppm, again, is not a  
18    public health issue. You can discuss that with  
19    public health issue.

20                   From air quality I'm concerned with the  
21    secondary formation of PM10 from the ammonia, and  
22    that is not going to happen if the NOx -- is NOx  
23    limited, let's put it this way. It's NOx limited.  
24    That means if you take the NOx out of the air you  
25    are not forming PM10.

1                   It seems like your question is more  
2           geared to public health folks more than air  
3           quality.

4           Q     Okay.  If we think that the southern end  
5           of the San Joaquin Valley will be populous in a  
6           couple of decades, do you think a facility in the  
7           Mojave Desert could accomplish -- well, would be  
8           less harmful to air than a facility at the present  
9           location?

10          A     That is for speculation.  I can't tell  
11         you in two decades what could happen, because I  
12         don't have the facts.  What kind of size power  
13         plants; how populated is populated; the density of  
14         this population; the size of the power plants; the  
15         natural -- if they are all natural gas.  And they  
16         are what kind of technology controls are on them.

17                 So there is a lot of factors I have to  
18         consider before I can give you a good answer to  
19         that.

20          Q     Okay.  From the staff evaluation I saw  
21         the concrete steps that the facility is going to  
22         do to offset ozone -- to do ERCs with San Luis  
23         Obispo County.

24                 What form of a mitigation for oxides of  
25         nitrogen generation In Kern County take?

1 A Would you please repeat your question?

2 Q Yeah. I think the heart of it is what  
3 concrete things will you do to mitigate the NOx  
4 generation in Kern County?

5 A Well, we did mitigate NOx, we did  
6 mitigate PM10, we did mitigate VOC and SOx.

7 Q What do you do in Kern County to  
8 mitigate NOx?

9 A You provide NOx for NOx. And the Kern  
10 County representative is here. He would be more  
11 than happy to answer your question.

12 Q Okay, --

13 A With the permission of the Committee, of  
14 course.

15 Q I'll delay the question until then.

16 MR. RATLIFF: Could I interrupt just a  
17 moment? Mr. Badr, do you mean offsets, is that --

18 MR. BADR: Yes, the offset NOx for NOx.  
19 But I would like to, since the air representative  
20 is available --

21 MR. RATLIFF: Okay.

22 MR. BADR: -- I'm reluctant to talk on  
23 their behalf. I can, but I'm reluctant to do so.

24 DR. UNGER: That's it.

25 HEARING OFFICER GEFTER: Thank you.

1 Ms. Griffin, do you have questions of the witness?

2 MS. GRIFFIN: No, I don't.

3 HEARING OFFICER GEFTER: Okay. Staff,  
4 are you going to present testimony from the Air  
5 District?

6 MR. RATLIFF: Yes.

7 HEARING OFFICER GEFTER: Okay, would you  
8 like to bring your witness forward?

9 MR. RATLIFF: One moment, I'd like to  
10 redirect Mr. Badr --

11 HEARING OFFICER GEFTER: You have  
12 redirect?

13 MR. RATLIFF: -- just a little bit.

14 REDIRECT EXAMINATION

15 BY MR. RATLIFF:

16 Q Mr. Badr, you used the term NOx  
17 limited --

18 A Yes.

19 Q -- with regard to the situation  
20 regarding the ammonia slip. Can you describe  
21 that? Can you explain the concept of NOx limited  
22 as you used it?

23 A Theoretically you can put in the air as  
24 much ammonia as you want, as long as you don't  
25 put -- and that's not, by itself it's not going to

1 form the secondary PM10.

2 If you will add NOx to it, now you are  
3 forming secondary PM10 or allowing the formation  
4 of the secondary PM10 to take place.

5 If you are ahold of the NOx, you are not  
6 allowing that reaction to take place. So it's a  
7 NOx limited. That mean you are limited -- the  
8 reaction is limited by that amount of NOx in the  
9 air.

10 Q Is the environment near the power plant  
11 currently rich in ammonia?

12 A Yes.

13 Q Is ammonia a problem from an air quality  
14 standpoint that you're trying to address?

15 A Ammonia is not a criteria pollutant.

16 Q Okay. Thank you.

17 EXAMINATION

18 BY PRESIDING MEMBER LAURIE:

19 Q Mr. Badr, can you take a very short  
20 period of time and indicate your expertise? What  
21 is your background?

22 A I'm a mechanical engineer. I've been  
23 working with the Energy Commission since 1990 on  
24 air quality issues, and the last eight years of  
25 these ten years I've been working on air quality

1       siting power plants. I sited around eight or nine  
2       so far, or perhaps one is still in the process,  
3       plus this one.

4               I have a masters in economics and also a  
5       degree in finance.

6               Q     Thank you, sir. The 10 ppm, whose  
7       standard is that? What number -- where do you get  
8       that number from?

9               A     The 10 ppm?

10              Q     Yes.

11              A     It has been the industry limitations, or  
12       specifications for the SCR since they came up  
13       awhile back that 10 is acceptable among the  
14       industry that it can be -- it's okay, it's  
15       achievable. The design of the power plant, it's  
16       easy to implement that 10 ppm with the amount of  
17       the SCR and the maintenance can be done on the  
18       SCR, the O&M on the SCR, as well, and changing  
19       catalysts, as well, for these power plants, or the  
20       requirements for the SCR.

21              So, 10 ppm become like the industry  
22       standard, so to speak. However, since I said that  
23       there's other districts in California will require  
24       5 ppm. Like Monterey, for example, will require 5  
25       ppm. That mean if this power plant were to be in

1 Monterey the District would ask for 5 ppm.

2 Q In this case the local district in this  
3 location requires 10?

4 A That's correct, sir.

5 Q Thank you. That's what I needed.

6 PRESIDING MEMBER LAURIE: I have no  
7 more.

8 HEARING OFFICER GEFTER: Any recross?

9 MR. THOMPSON: Nothing, thank you.

10 HEARING OFFICER GEFTER: Redirect?

11 MR. RATLIFF: No.

12 MR. BADR: I have additional -- you had  
13 the request, sir, last time that we get you  
14 something from EPA saying that 10 ppm, and I think  
15 we order that -- we did order, okay, enter into  
16 the record.

17 HEARING OFFICER GEFTER: I have not seen  
18 that.

19 MR. BADR: No, I haven't emailed this.  
20 The best I can get from EPA saying it's up to the  
21 district to do what they believe, so here it is,  
22 as you requested. I'm passing them out.

23 HEARING OFFICER GEFTER: All right,  
24 we'll make copies of that, and distribute it to  
25 all the parties. And we'll identify it as the



1 exhibit next in order.

2 We also would like to hear from the Air  
3 District representative if staff would like to  
4 sponsor that witness.

5 MR. RATLIFF: Yes, the Air District is  
6 represented by two witnesses, Mr. Richard Karrs,  
7 Air Quality Engineer, and Mr. Thomas Goff, Permit  
8 Services Manager.

9 Whereupon,

10 RICHARD KARRS and THOMAS GOFF  
11 were called as witnesses herein and after first  
12 being duly sworn, were examined and testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. RATLIFF:

16 Q I think I'll address the question to you  
17 both and whichever one of you should answer it,  
18 I'll let you decide, yourselves.

19 I have with me a document which is the  
20 final determination of compliance.

21 HEARING OFFICER GEFTER: And that's an  
22 exhibit in this case.

23 MR. RATLIFF: Yes.

24 HEARING OFFICER GEFTER: We've already  
25 identified it. Exhibit 29.

1 MR. RATLIFF: Yes, okay.

2 BY MR. RATLIFF:

3 Q Was that document prepared by the Air  
4 District?

5 MR. GOFF: My name is Thomas Goff, and  
6 the answer to that question is yes.

7 MR. RATLIFF: And were you responsible  
8 for the preparation of that document?

9 MR. GOFF: Yes.

10 MR. RATLIFF: Do you know approximately  
11 what date that was released? My copy is undated.

12 MR. GOFF: The final determination of  
13 compliance was released August 3rd of this year.

14 HEARING OFFICER GEFTER: The final DOC,  
15 I believe the copy I have was September 5th.

16 MR. GOFF: I stand corrected, September  
17 5th.

18 MR. RATLIFF: Could you describe  
19 generally the purpose and the contents of the  
20 determination of compliance?

21 MR. GOFF: Well, the District is  
22 responsible for regulating stationary sources of  
23 air contaminants located in the San Joaquin Valley  
24 Air Basin.

25 And we regulate those sources through a

1       permitting process. And that permitting process  
2       is intended to allow us to impose permit  
3       conditions on stationary sources of air  
4       contaminant emissions sufficient to insure  
5       compliance with the District air pollution rules  
6       and regulations.

7               MR. RATLIFF: Your permit does not  
8       include what is called a PSD or Prevention of  
9       Significant Deterioration permit, is that correct?

10              MR. GOFF: That's correct, that's a  
11       federal regulation not adopted by the San Joaquin  
12       Valley Unified Air Pollution Control District. As  
13       such, any person subject to the federal provision  
14       of significant deterioration regulation has to  
15       obtain the permit from the EPA Region IX in San  
16       Francisco.

17              MR. RATLIFF: Will this applicant have  
18       to do so?

19              MR. GOFF: Yes, he would.

20              MR. RATLIFF: Do you have any other  
21       comments that you think you would like to make  
22       based on the preceding discussion about your  
23       permit?

24              MR. GOFF: Well, I would like to make a  
25       few comments. The DOC is a determination of

1 compliance with the District rules and  
2 regulations. In the District rules and  
3 regulations ammonia is not defined as a precursor  
4 to particulate matter.

5 So when we looked at ammonia emissions  
6 with regard to establishing the 10 ppm ammonia  
7 slip limit, we were regulating ammonia as a toxic  
8 air contaminant, and as a potential nuisance air  
9 contaminant. In other words, the odor of ammonia  
10 in the air.

11 Ammonia came into use in the southern  
12 part of the San Joaquin Valley for NOx control  
13 back in about 1982. And ammonia is sometimes used  
14 to reduce NOx in conjunction with a catalyst, and  
15 sometimes used without a catalyst.

16 But the way that ammonia works in either  
17 situation is that one mol of ammonia is available  
18 to reduce one mol of NOx to elemental nitrogen and  
19 water vapor.

20 We're as severe a nonattainment area for  
21 ozone in the southern San Joaquin Valley, well,  
22 the entire San Joaquin Valley. In our rules and  
23 regulations oxides of nitrogen, or NOx, are  
24 defined as a precursor to ozone.

25 For that reason we're focused on

1 eliminating oxides of nitrogen emissions to  
2 alleviate this severe ozone ambient air quality  
3 problem that we have here.

4 In some other areas of California,  
5 particularly the coastal areas, they don't have  
6 the ozone problem that we have here, and their  
7 focus may not be so heavy on minimizing NOx  
8 emissions.

9 We're obligated under the federal Clean  
10 Air Act to attain the ozone ambient air quality  
11 standard by the end of the year 2000. We have to  
12 have three years in a row of compliance annually  
13 with the ambient air quality standard for ozone.

14 That means effectively we have to meet  
15 the standard by the year 2003. So our focus in  
16 this district is on ozone precursor control. The  
17 ammonia slip limit of 10 ppm was evaluated from a  
18 health risk standpoint to see if there is any  
19 increased incidence of morbidity or mortality to  
20 exposed populations due to 10 ppm ammonia slip.  
21 The answer was no, that there wasn't.

22 And it was evaluated from a nuisance  
23 standpoint, are there people out there that are  
24 likely to smell the ammonia and object to it. And  
25 we determined that wouldn't be the case at 10 ppm.

1                   With modern power plant and SCR  
2           technology it's true that under steady state  
3           operation when the catalyst is new performance  
4           levels of 1, 2 and 3 ppm are achievable.

5                   But, because the ammonia to NOx ejection  
6           ratio is on a 1-to-1 basis, or only 1 molecule of  
7           ammonia is used for every molecule of NOx and it's  
8           reduced, when you're trying to reduce NOx to a  
9           very low level, as we are here because of our  
10          severe attainment problem, 2.5 ppm which is a very  
11          aggressive level, then you have to get enough  
12          ammonia there to consistently react with each NOx  
13          particle that's in the exhaust gas stream.

14                   And this is difficult to do even in a  
15          steady state condition so that the ammonia is  
16          injected and distributed evenly across the exhaust  
17          gas stream and across the catalyst. But whenever  
18          the equipment -- the power plant has to follow  
19          load or change loads, then the ammonia control to  
20          the amount of NOx that's generated by the change  
21          in load is much more difficult to occur.

22                   Also, with the passage of time, and  
23          we're talking about several years, generally the  
24          catalyst makers talk about three year catalyst  
25          life, but in reality it's generally a little

1 better than that, it's somewhere around five to  
2 ten years of catalyst life, as the catalyst gets  
3 older, the sites become deactivated on it due to  
4 normal attrition, fouling, maintenance.

5 And at that time in order to continue to  
6 achieve this 2.5 ppm NOx limit that we want,  
7 because we're severe in nonattainment for ozone,  
8 of which NOx is a precursor, they have to inject  
9 more ammonia to get the performance level that  
10 we're demanding.

11 And with this site location and with the  
12 health risk evaluation, the 10 ppm ammonia limit  
13 is appropriate.

14 We have not required lower than 10 ppm  
15 ammonia limit in any of our other projects,  
16 whether they be CEC projects or otherwise. And we  
17 have allowed higher levels in certain qualifying  
18 cases.

19 And I think that's all that I wanted to  
20 say.

21 MR. RATLIFF: Does that conclude your  
22 testimony?

23 MR. GOFF: Yes, it does.

24 MR. RATLIFF: The witnesses are  
25 available for cross-examination.

1 HEARING OFFICER GEFTER: Does applicant  
2 have any cross-examination?

3 MR. THOMPSON: We do not, thank you.

4 HEARING OFFICER GEFTER: Do either of  
5 the intervenors have any questions?

6 DR. UNGER: Yes.

7 CROSS-EXAMINATION

8 BY DR. UNGER:

9 Q We're being told that ammonia isn't  
10 going to harm our public health. Is that the  
11 opinion of the Kern County Planning Department  
12 when they did the EIRs on Borba and on Hershell  
13 Moore?

14 PRESIDING MEMBER LAURIE: Dr. Unger, I  
15 don't believe the testimony was, quote, "ammonia  
16 will not harm the public health." I think you  
17 have to talk about certain levels of ammonia.

18 DR. UNGER: Okay.

19 BY DR. UNGER:

20 Q The increment of ammonia caused by  
21 Pastoria will not harm public health, thank you.  
22 Is that consistent with the statement on those  
23 Borba and Hershell Moore EIRs that ammonia is a  
24 significant unmitigatable environmental impact of  
25 those dairies?



1                   MR. GOFF: Well, let me tell you how we  
2                   evaluated the ammonia impact for this facility.  
3                   We did an air quality simulation modeling  
4                   following California State Air Resources Board AB-  
5                   2588 procedures, which is the Toxics Hotspot and  
6                   Assessment Act, and it required -- what we do is  
7                   we model the emission of ammonia and determine the  
8                   maximum ground level concentration that that  
9                   causes at the project site, in conjunction with  
10                  any background levels that's at that project site,  
11                  to determine whether there's an acute health  
12                  impact that would be caused by somebody exposed to  
13                  that.

14                 Then we also do another modeling  
15                 simulation run over a 30-year exposure to the  
16                 average expected ammonia concentration due to this  
17                 plant, plus the background levels, to determine if  
18                 there's any increase in morbidity or mortality to  
19                 exposed populations.

20                 In this case the conclusion was that  
21                 there was not a significant health risk to any  
22                 exposed populations.

23                 DR. UNGER: In your 30-year evaluation  
24                 did you figure that there would be a significant  
25                 amount of ammonia from automobile catalytic

1 converters, and a significant increase in the  
2 amount of ammonia from dairy herds which we are  
3 likely to increase in Kern County?

4 MR. GOFF: No, the way that we did this  
5 evaluation was based on the impact now, and  
6 assumed that it existed for 70 years, and that a  
7 single person lived at that point of maximum  
8 ground level exposure for 70 years continuously  
9 and was exposed to that.

10 DR. UNGER: I see, it's the impact now,  
11 not the impact we -- you didn't reckon with the  
12 amount of ammonia that we would probably have in  
13 the future. You just reckoned with what the  
14 ammonia is now?

15 MR. GOFF: I have no idea what it might  
16 be in the future.

17 DR. UNGER: The Kern County Planning  
18 Department does, if you'd like to see -- I don't  
19 know if I have it. I have it buried here. They  
20 anticipate, they say that the number of cows as of  
21 July 2000 is 59,000; and within a few years it  
22 will be close to 100,000.

23 No, -- let's see -- one other question.  
24 The staff assessment says what ozone mitigations  
25 will make for San Luis County. But I didn't grasp

1 specifically what NOx mitigations will the plant  
2 do for Kern County.

3 Can you tell us what the plant will do  
4 for Kern County to offset the NOx that the plant  
5 produces?

6 MR. GOFF: I can describe the basis  
7 under which we approved the project proposal, and  
8 that is they are adding new NOx emissions from  
9 their power plant. And under our rules and  
10 regulations they are allowed to bring about  
11 emission offsets, or offset the emission from  
12 surplus emission reductions made by other  
13 facilities.

14 And so that's what they did in this  
15 case. They went out and found other companies  
16 that had voluntarily reduced emissions in the  
17 past, and had had those voluntary emission  
18 reductions validated by the San Joaquin Valley  
19 Unified Air Pollution Control District, and then  
20 they acquired the rights to those excess emission  
21 reductions and surrendered them as a basis for  
22 approval for this project.

23 And they surrendered them at a greater  
24 than one-to-one ratio, so to provide that there  
25 would be a net air quality benefit under approval

1 of this project.

2 DR. UNGER: What if Pastoria Energy  
3 Facility had not acquired those rights, would the  
4 people who cut down on their NOx emissions have  
5 raised them?

6 MR. GOFF: That could happen. If  
7 Pastoria had not acquired sufficient offsets for  
8 this project we would not have been able to issue  
9 our determination of compliance.

10 DR. UNGER: Thank you.

11 HEARING OFFICER GEFTER: Ms. Griffin, do  
12 you have questions?

13 MS. GRIFFIN: No.

14 EXAMINATION

15 BY HEARING OFFICER GEFTER:

16 Q Question regarding the PSD permit. Do  
17 you have a sense of the timeline in which the EPA  
18 would issue the PSD permit? What is the timeline  
19 on that?

20 MR. GOFF: I think maybe Pastoria would  
21 be better to answer that question.

22 HEARING OFFICER GEFTER: All right.  
23 When their witness comes on we'll ask that  
24 question.

25 The other question I have is regarding

1 the catalyst and your testimony that as the  
2 catalyst gets older during the course of the life  
3 of the project, it's necessary to inject more  
4 ammonia.

5 Does the FDOC include a condition  
6 regarding the maybe catalyst replacement, or the  
7 increase in the amount of ammonia injection?

8 MR. GOFF: Not specifically. I made  
9 that comment to try to explain why we determine 10  
10 ppm was the appropriate level for ammonia, when  
11 upon start-up the plant may very well achieve  
12 something like 3 ppm ammonia.

13 And we're providing for them to be able  
14 to operate in an economic way, and with an  
15 expected degradation of the catalyst performance.  
16 And in order to get the good NOx performance to  
17 have to inject surplus ammonia.

18 The second part of your question was?

19 HEARING OFFICER GEFTER: Was whether  
20 there would be catalyst replacement.

21 MR. GOFF: We don't have a specific  
22 catalyst replacement condition in our authority to  
23 construct. They simply have to meet all of the  
24 emission limitations all of the time.

25 They're required to have continuous

1 emission monitors. As they see the performance  
2 deteriorate, at some point it's going to be on  
3 their own as to decide to shut down and replace  
4 the catalysts before they exceed the 2.5 ppm  
5 emission limitation. Otherwise, they'll be  
6 subject to enforcement action by the District.

7 MR. BADR: May I clarify? To add to the  
8 District, under no circumstances giving the  
9 conditions that the 2.5 ppm for the ammonia get to  
10 be violated or the 10 ppm for the -- I'm sorry,  
11 2.5 ppm for the NOx get to be violated, or the 10  
12 ppm for the ammonia get to be violated.

13 The reason it varies between 2 and 10,  
14 perhaps, because of the O&M, the maintenance and  
15 operation of these facility. As it gets older, it  
16 deteriorate, the applicant is still under the gun,  
17 so to speak, to meet the 2.5 ppm, so they have to  
18 inject more ammonia or get a clean-up the catalyst  
19 pretty well, or replace it if it needs to be  
20 replaced to meet the 10 ppm.

21 So is under two constraints. One for  
22 the NOx, one for the ammonia. He got to meet both  
23 of them.

24 HEARING OFFICER GEFTER: Thank you.

25 With respect --

1                   MR. GOFF: And may I clarify, also,  
2           please. Actually ammonia injection only works  
3           during a proper temperature window. So there is  
4           provisions in the DOC for waiver of the 2.5 ppm  
5           NOx limit during start-up conditions when the  
6           catalyst is not effective anyhow.

7                   And at that time they're not injecting  
8           ammonia, because it won't do any good, so they're  
9           still expected to meet the 10 ppm ammonia limit.  
10          But there is actually a specified relief for  
11          defined start-up and shut-down periods from the  
12          NOx ppm limit.

13                   HEARING OFFICER GEFTER: All right.  
14          With respect to the applicant's offset package,  
15          there was some testimony that they had an adequate  
16          offset package. You didn't really specify. Can  
17          you tell us a bit about the offset package?

18                   MR. GOFF: Well, my testimony was that  
19          he asked what would happen if they didn't secure  
20          enough offsets. And my answer was that we  
21          wouldn't be able to issue the DOC.

22                   Maybe I'd call on Rich Karrs to describe  
23          the offset package, as he's more familiar with  
24          that.

25                   HEARING OFFICER GEFTER: Okay.

1                   PRESIDING MEMBER LAURIE: Well, let me  
2 ask, is there a description of the offset package  
3 already anywhere in the record?

4                   MR. BADR: Yes, sir.

5                   PRESIDING MEMBER LAURIE: Okay, --

6                   MR. BADR: It's in my testimony in  
7 appendix A.

8                   PRESIDING MEMBER LAURIE: Okay. Ms.  
9 Gefter, is there any need to amplify on that from  
10 your perspective?

11                  HEARING OFFICER GEFTER: My question to  
12 the District is whether this offset package is  
13 adequate to meet your conditions? And, in fact, I  
14 understand from the applicant's testimony that  
15 it's actually more than adequate. And I wanted to  
16 hear from the District.

17                  MR. GOFF: That's correct. In our DOC  
18 we've required the number of offsets that are  
19 necessary for us to find that this project  
20 complies with our rules and regulations.

21                  The applicant has secured more offsets  
22 than that, that they hold in reserve that they can  
23 use for any purpose or sell to somebody else later  
24 on.

25                  HEARING OFFICER GEFTER: Thank you.



1 Exhibit 29, which is the final determination of  
2 compliance, does staff intend to sponsor that  
3 exhibit?

4 MR. RATLIFF: Yes.

5 HEARING OFFICER GEFTER: All right, do  
6 you want to move that into the record?

7 MR. RATLIFF: Yes.

8 HEARING OFFICER GEFTER: Okay, is there  
9 any objection to the FDOC?

10 MR. THOMPSON: None.

11 DR. UNGER: No.

12 HEARING OFFICER GEFTER: Intervenors?

13 All right. Exhibit 29, sponsored by staff, is  
14 admitted into the record.

15 There are several letters from the Air  
16 District regarding the release of the FDOC, and  
17 these were letters to various -- to the EPA, which  
18 I have identified as exhibit 32; a letter to CARB,  
19 exhibit 33; and a letter to the CEC, exhibit 34.

20 I wanted to ask the Air District  
21 witnesses to identify those letters and then ask  
22 whether staff wants to offer those letters into  
23 evidence.

24 MR. RATLIFF: Okay.

25 HEARING OFFICER GEFTER: The letter to

1 the EPA is dated July 31st. The letter to CARB is  
2 dated July 26th. And the letter to CEC July 26th.  
3 These letters respond to comments of the agencies  
4 regarding the preliminary DOC. You authenticate  
5 those letters?

6 MR. GOFF: Yes, I will. And you'll also  
7 note that these letters serve as announcement that  
8 the District has issued the final determination of  
9 compliance. So the date of the final  
10 determination of compliance is July 26th, not the  
11 August 3rd that I testified to earlier, or the  
12 September date that you mentioned.

13 HEARING OFFICER GEFTER: All right, but  
14 that's regarding the PDOC?

15 MR. GOFF: No, this is the final  
16 determination of compliance.

17 HEARING OFFICER GEFTER: Oh, all right.

18 MR. GOFF: The response to the comments  
19 was accompanied with the determination of  
20 compliance.

21 HEARING OFFICER GEFTER: I see, all  
22 right. All right, those are exhibits 32, exhibit  
23 33 and exhibit 34. Are there any objections to  
24 moving those into evidence? Is staff making the  
25 motion to move them into evidence?

1 MR. RATLIFF: Yes.

2 HEARING OFFICER GEFTER: Is there any  
3 objection to that motion?

4 DR. UNGER: No.

5 MR. THOMPSON: None.

6 MS. GRIFFIN: No.

7 HEARING OFFICER GEFTER: All right.

8 Those exhibits are now entered into the record.

9 Staff's witnesses on air quality may be  
10 excused. Oh, I'm sorry, there is one more item,  
11 and Mr. Badr had circulated an email between  
12 himself and the EPA. And it's an email indicating  
13 the EPA's view on the ammonia slip level.

14 For what it's worth we'll identify this  
15 exhibit as exhibit 57.

16 And is there any objection -- is staff  
17 moving this into the record?

18 MR. RATLIFF: Sounds like we just did.

19 HEARING OFFICER GEFTER: All right.

20 (Laughter.)

21 HEARING OFFICER GEFTER: Fine. Is there  
22 any objection?

23 MR. THOMPSON: No.

24 DR. UNGER: No.

25 MS. GRIFFIN: No.

1 HEARING OFFICER GEFTER: All right,  
2 exhibit 57 is moved into the record.

3 PRESIDING MEMBER LAURIE: For purposes  
4 of clarification the reason for that is the  
5 Committee had earlier inquired regarding the  
6 consistency between CARB's position -- I'm sorry,  
7 between EPA's position and local District decision  
8 making. And this exhibit is designed to respond  
9 to that question.

10 Thank you, Mr. Badr.

11 MR. BADR: And this is the best I can  
12 get out of EPA.

13 MR. RATLIFF: Commissioner, EPA and CARB  
14 are both notoriously difficult to get something in  
15 writing from and this --

16 PRESIDING MEMBER LAURIE: The letter  
17 indicates that they defer, and that's pretty self-  
18 explanatory. Thank you.

19 HEARING OFFICER GEFTER: Okay, the  
20 staff's witnesses may be excused, although if you  
21 want to stay as a panel, subsequent to the  
22 applicant's testimony, there may be questions that  
23 you could answer. Although, we'll see.

24 Is applicant ready with your witness?

25 MR. THOMPSON: Yes, we are. Applicant

1 would like to call Ms. Joan Heredia in the area of  
2 air quality. Ms. Heredia has not been sworn.  
3 Whereupon,

4 JOAN HEREDIA  
5 was called as a witness herein and after first  
6 being duly sworn, was examined and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. THOMPSON:

10 Q Ms. Heredia, first of all, thank you for  
11 being here. We appreciate your effort in  
12 difficult times.

13 Would you please state your name and  
14 place of employment for the record.

15 A My name is Joan Heredia and I'm a Senior  
16 Project Engineer for URS Corporation.

17 Q And am I correct that your prepared  
18 testimony is included as part of exhibit 38 in  
19 this proceeding?

20 A That is correct.

21 Q And is part of that testimony you're  
22 seeking to sponsor today, part of exhibit 1 which  
23 is applicant's AFC, notably section 5.2, which is  
24 the air quality analysis, and appendix I to  
25 exhibit 1, plus exhibits 3, 8, 19, 29 and a

1 document that is being passed out as we speak,  
2 which has been identified as 39, which is a letter  
3 from San Luis Obispo County to Commissioner  
4 Laurie, is that correct?

5 A That is correct.

6 Q Thank you very much. Would you please  
7 give a brief summary of your testimony in this  
8 proceeding?

9 A Certainly. As the air task manager for  
10 URS in analyzing the air quality environmental  
11 impact for this particular, the Pastoria Power  
12 plant, I gathered relevant meteorological data  
13 necessary for the evaluation of system impacts,  
14 performed the analysis of the impacts that would  
15 result from project construction, as well as  
16 operation.

17 I've also reviewed the San Joaquin  
18 Valley Air Pollution Control District preliminary  
19 and final determination of compliance. And the  
20 CEC Staff air quality analysis contained in the  
21 final staff assessment.

22 With the conditions of certification  
23 recommended by the Air District and staff, I  
24 believe that the project construction and  
25 operation will not result in any significant

1 adverse air quality impacts.

2 Q Thank you very much.

3 MR. THOMPSON: And with that I would  
4 like to move into the record exhibits 3, 8, 19, 29  
5 and 39.

6 HEARING OFFICER GEFTER: And exhibit 19  
7 is the preliminary DOC?

8 MR. THOMPSON: That's exactly right. 29  
9 has been -- 29 has been put in by staff. My  
10 apologies.

11 HEARING OFFICER GEFTER: Right.

12 MR. THOMPSON: 19 is the preliminary  
13 DOC, that's right.

14 HEARING OFFICER GEFTER: Right. Is  
15 there any objection to exhibits 3, 8, 19 and 39  
16 being moved into the record?

17 MR. RATLIFF: No.

18 DR. UNGER: No.

19 HEARING OFFICER GEFTER: Those exhibits  
20 are now entered into the record.

21 Is there any cross-examination for the  
22 witness?

23 MR. RATLIFF: A clarifying question.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. RATLIFF:

3 Q Ms. Heredia, are you familiar with the  
4 toxic air contaminants portion of the air quality  
5 analysis?

6 A I am familiar with it. That is  
7 contained within the public health, which the task  
8 manager for that is John Koehler, but yes, I am  
9 familiar with it.

10 Q I realize that there is this division  
11 here, the public health -- usually the way the  
12 Energy Commission does it, public health is toxic  
13 air contaminants, so I apologize in advance if I'm  
14 asking you questions that are not within your  
15 proper realm.

16 But, are you familiar with the  
17 conservatisms of that analysis?

18 A Yes, I am.

19 Q Can you describe what those  
20 conservatisms are? To put this in context, we had  
21 questions earlier about the ambient ammonia in the  
22 background, in the presence of the environs of the  
23 power plant.

24 Is ammonia a toxic air contaminant  
25 that's considered by the toxic air contaminant



1 analysis?

2 A Ammonia was considered in the health  
3 risk assessment for acute effects.

4 Q And can you describe the conservatisms  
5 that go into the assessment of the toxic air  
6 contaminants, including ammonia?

7 A Yes, I can. First and foremost, the  
8 emission factors. We did base it upon the maximum  
9 potential ammonia emissions which would occur at  
10 10 ppm.

11 Secondly, the health impacts or the  
12 hazard indiciae is based upon toxicological studies  
13 which are very conservative in nature. Generally  
14 they can over-estimate the health impacts by up to  
15 100 percent.

16 The modeling which is also performed, we  
17 use, you know, very conservative assumptions and  
18 coordinated with both the San Joaquin, CEC, ARB  
19 and EPA in development of the methodologies which  
20 were used, so that we were conservative in our  
21 approach.

22 Q In terms of the person who would be  
23 exposed, did you make assumptions about the kind  
24 of person who would be exposed, for that analysis?

25 A That is correct.

1           Q     And do you assume a sensitive individual  
2     or do you assume just a normal person?

3           A     My understanding, and I am getting a  
4     little bit out of my realm here, but my  
5     understanding is that when the hazard indices are  
6     defined, that they are based upon sensitive  
7     populations.

8           MR. RATLIFF:   Thank you, I have no  
9     further questions.

10          HEARING OFFICER GEFTER:   Dr. Unger.

11          DR. UNGER:    Thank you.

12                        CROSS-EXAMINATION

13     BY DR. UNGER:

14          Q     Did you consider the chronic effect of  
15     ammonia based on current emissions, or based on  
16     the emissions we're likely to have in the future?

17          A     It was based upon 10 ppm, which would be  
18     the maximum allowed under the current permit.

19          Q     But when you did cumulative impacts, did  
20     you figure that Pastoria would be joined by other  
21     ammonia emitters, and by the emitters that I've  
22     been spending our time on the last 20 minutes?  
23     The cows and so on.

24          A     Certainly.   The health risk assessment  
25     is based upon the impacts from the facility,

1 alone. I will add, however, as part of our health  
2 risk analysis we did look at impacts with and  
3 without the presence of ammonia. And the  
4 difference is almost on the order of magnitude  
5 that would be associated with the error within the  
6 analysis. They're very low. Very very low.

7 Q Are there people living in the valley  
8 who will be exposed to emissions from Pastoria and  
9 from no other source?

10 A Not that I'm aware of.

11 Q Thank you.

12 HEARING OFFICER GEFTER: All right.

13 EXAMINATION

14 BY HEARING OFFICER GEFTER:

15 Q I have a question regarding the  
16 meteorological data. Where was that -- what's the  
17 basis for your data, which monitoring station data  
18 did you use?

19 A There actually were two sets of data  
20 which was used for this facility. The EPA had  
21 recommended that we should use conservative  
22 assumed screening data for complex terrain, which  
23 we did do.

24 Subsequent to that we were also  
25 requested by staff to look at data using

1 Bakersfield meteorological data, which we did, as  
2 well.

3 Based upon the fact that we have done  
4 the modeling using two different data sets and  
5 found that the impacts were not significant in  
6 either case, I feel fairly assured that we've done  
7 an adequate analysis.

8 HEARING OFFICER GEFTER: Thank you. Any  
9 other questions? Do you have redirect?

10 MR. THOMPSON: I have one additional  
11 item that has been brought up previously, and I  
12 think this would help in the record.

13 REDIRECT EXAMINATION

14 BY MR. THOMPSON:

15 Q Mr. Heredia, do you have an estimate of  
16 when EPA would issue the PSD permit?

17 A I've been in close coordination with Ed  
18 Pike, who is the permit engineer at EPA. And he  
19 had indicated to me actually probably a month ago  
20 that he thought that that PSD permit would be  
21 issued at the beginning part of September.

22 My understanding is he is very close to  
23 issuance.

24 MR. THOMPSON: Great. Thank you very  
25 much.

1                   HEARING OFFICER GEFTER: Thank you. No  
2                   more questions for the witness. The witness may  
3                   be excused. Thank you very much.

4                   MS. HEREDIA: Thank you.

5                   HEARING OFFICER GEFTER: We'll get to  
6                   public comment in just a moment. Dr. Unger had  
7                   submitted a document which we had identified as  
8                   exhibit 42. I wanted to know if you want to move  
9                   that document into the record?

10                  DR. UNGER: Thank you. I think there's  
11                  a typo. It refers to my letter of September 6th,  
12                  there's an extra 5 in there --

13                  HEARING OFFICER GEFTER: Yes, we'll  
14                  correct that.

15                  DR. UNGER: -- and I'm happy that you  
16                  asked me to submit it into the record.

17                  HEARING OFFICER GEFTER: Okay. Any  
18                  objection from any party?

19                  MR. THOMPSON: None.

20                  MR. RATLIFF: No, although it would be,  
21                  I think, helpful if Dr. Unger would explain. It  
22                  looks like there were some pages from an EIR in  
23                  there, but there is no description of the source  
24                  concerning ammonia. I think from cattle feed lots  
25                  or something of that, but I'm not sure. If we

1       could just know the source of that, that would be  
2       useful.

3               DR. UNGER:  It says on the bottom lower  
4       right-hand corner, Borba Dairy's Project.  I have  
5       the whole EIR here.  But it's from the Borba EIR.  
6       I guess dated, in the lower left-hand corner, 3  
7       September 1999.

8               PRESIDING MEMBER LAURIE:  That will be  
9       adequate, Dr. Unger.

10              HEARING OFFICER GEFTER:  Yes, thank you.  
11       Exhibit 42 is now admitted into the record.

12              And there's public comment on air  
13       quality?  Come up to the microphone, please.

14              MR. FOX:  Yes, Dennis Fox.  Two  
15       questions, one's fairly softball.  Compared to a  
16       no-action alternative, what would be the PM, since  
17       before lunch it was noted that this impacts  
18       farming water.

19              Under that hypothesis, if there is less  
20       farming, there would be less PM from the farming.  
21       What is the comparison between that PM and the PM  
22       that is being produced here at this location?

23              The second one is the impacts not on  
24       people but on vegetative sources.  We've already  
25       lost our lettuce industry in Metler and that area.

1 But, mainly the vegetation, grapes, et cetera,  
2 that and the vegetation of the forest. And they  
3 talk about stacking going, carrying a lot of this,  
4 even over into the Mojave, which they must love.

5 But, the reduction of the forest health  
6 to the point of infestation and fire. Of course,  
7 now we're at the point we're having, forests are  
8 producing more PM10 than anything in the last  
9 couple months.

10 I was wondering what you could comment  
11 on that, and what would be the effects.

12 PRESIDING MEMBER LAURIE: You have posed  
13 questions --

14 MR. FOX: And I think they should be --  
15 yes.

16 PRESIDING MEMBER LAURIE: I'm sorry?

17 MR. FOX: Yeah, and I would like those  
18 two. They're not really rhetorical.

19 PRESIDING MEMBER LAURIE: I understand.

20 MR. FOX: The first one would be  
21 somewhat rhetorical, but --

22 PRESIDING MEMBER LAURIE: What I would  
23 ask is that -- was staff writing down the  
24 questions as posed? What I would ask is that  
25 staff take those questions as posed, and somebody

1 seek to respond to the comments personally. We'd  
2 like to use this opportunity to offer comment, as  
3 opposed to offer questions --

4 MR. FOX: Yes.

5 PRESIDING MEMBER LAURIE: -- which can  
6 best be obtained in a one-on-one meeting with  
7 staff, for example. Okay?

8 MR. FOX: Thank you.

9 PRESIDING MEMBER LAURIE: Thank you,  
10 sir.

11 MR. THOMPSON: Mr. Laurie, applicant's  
12 air witness is going to give the gentleman a  
13 business card so that if he wants to have a  
14 telephone communication about this, we will  
15 cooperate.

16 PRESIDING MEMBER LAURIE: Okay, what I'd  
17 like to do is we have our Fire Chief sitting in  
18 the back row. I believe he's here to testify  
19 about socioeconomics, is that correct?

20 MR. THOMPSON: That's correct.

21 PRESIDING MEMBER LAURIE: What I'd like  
22 to do, Mr. Thompson, is have you make an offer of  
23 proof and see if the other parties are willing to  
24 stipulate to it so the Fire Chief can go home.  
25 Please indicate if the Fire Chief were called upon



1       what would he testify to.

2               And, sir, I would ask you to listen to  
3       this. And if you disagree -- I'm talking to the  
4       Chief -- and if you disagree, say so.

5               HEARING OFFICER GEFTER: I think I would  
6       like him to come forward and --

7               PRESIDING MEMBER LAURIE: Okay, sir, why  
8       don't you come forward. There's no need for you,  
9       at this time, to identify yourself. You're not  
10      going to take the witness stand yet.

11              MR. THOMPSON: Rather than me try this,  
12      Mr. Commissioner, if I could ask Mr. Wehn to  
13      testify I think that what he would testify to, and  
14      we'll keep it very short, would be the same thing  
15      as the First Department would testify to, and that  
16      is the status of those negotiations.

17              So, if I may ask Mr. Wehn to explain it  
18      under oath, we may have the same --

19              PRESIDING MEMBER LAURIE: Just trying to  
20      save time.

21              MR. THOMPSON: I understand.

22              PRESIDING MEMBER LAURIE: Well, what I  
23      was trying to do was avoid testifying. But, --

24              MR. THOMPSON: Worker safety-3, the  
25      condition of certification, requires us to

1 negotiate with the Fire Department concerning  
2 improvements to the fire district.

3 We are in those negotiations. And we  
4 expect them to be fruitful. We don't have an end  
5 result, we don't have a final agreement. I  
6 suspect that both of these witnesses would testify  
7 that they are making progress, but there is no  
8 final agreement, and that we will comply with  
9 worker safety-3.

10 PRESIDING MEMBER LAURIE: The Hearing  
11 Officer would like to get some of that on the  
12 record, so go ahead and swear the witness. Be  
13 direct, please.

14 MR. THOMPSON: Yes, sir. Mr. Wehn has  
15 been previously sworn.

16 DIRECT EXAMINATION

17 BY MR. THOMPSON:

18 Q Mr. Wehn, you've submitted testimony in  
19 the area of socioeconomics, specifically regarding  
20 the project's negotiations with the Fire  
21 Department. Could you very briefly summarize  
22 where the project is in that regard?

23 A Yes, I can. We've been talking to the  
24 Fire Department for a number of months with  
25 respect to what would be the impact of our project

1 on the Fire Department.

2 We are still currently talking to the  
3 Fire Department and we think that we are making  
4 major advancement in those negotiations. And I  
5 would like to submit that the applicant is willing  
6 and able to comply with worker safety number 3,  
7 because we do believe within the next couple  
8 months we will have an agreement that we can  
9 provide to the California Energy Commission.

10 EXAMINATION

11 BY HEARING OFFICER GEFTER:

12 Q And this is regarding additional  
13 equipment for the Fire Department?

14 A Well, it will be mitigation in one form  
15 or another, whether it's equipment or whether it's  
16 some other form that we come to an agreement on.

17 But there are a number of proposals on  
18 the table. We're just trying to refine those.

19 Q And you expect to provide it to the  
20 Committee before what date?

21 A If I were to go by the worker safety  
22 number 3, I would have to provide it no later than  
23 30 days prior to the project ground-breaking. So  
24 that's -- and our expectation would be, ground-  
25 breaking in June of 2001.

1                   It is my feeling that before the end of  
2           this year we will have an agreement with the Fire  
3           Department.

4           Q     Okay, and one further question  
5           regarding, the Fire Department is moving new of  
6           the fire stations to the new Tejon industrial  
7           complex. Can you tell us about that, Mr. Wehn?

8           A     What I know is that part of the new  
9           Tejon Ranch development, there's a fire station  
10          that will be moved down into the area. I believe  
11          it's Laval Road and I-5.

12                   And that is the location where we would  
13          provide -- or they would provide support to the  
14          Pastoria project.

15          Q     Okay, and that is the Metler Fire  
16          Station? The Metler Fire Station is going to be  
17          closed, and then rebuilt over at Laval Road?

18          A     That is correct.

19          Q     Okay, and is it going to continue to be  
20          called the Metler Station, or will it have a new  
21          name?

22                   MARSHAL CASTLE: It will be Station 55  
23          when they change the name --

24                   HEARING OFFICER GEFTER: Okay, and for  
25          the record, could you state your name and --

1                   MARSHAL CASTLE:   Okay, Phil Castle.  I'm  
2                   the Fire Marshal with Kern County Fire Department.

3                   HEARING OFFICER GEFTER:  Thank you.  And  
4                   what is the timeline on that fire --

5                   MARSHAL CASTLE:  It will just take me a  
6                   minute to go over that.  The timeline is tied into  
7                   the construction at the Tejon Ranch and the  
8                   industrial complex, so it could be anywhere from a  
9                   year or longer than that.  Depends on how their  
10                  building process goes.  So I can't really narrow  
11                  that down.

12                  Also included with that relocation of  
13                  the fire station is an additional person that  
14                  Tejon Ranch, in the mitigation, is supplying.  So  
15                  it's a two-person station now.  It will be a  
16                  three-person.  So we'll be increasing the staffing  
17                  by 33 percent.

18                  And the new station will be about five  
19                  miles closer to your facility than the old  
20                  station.

21                  HEARING OFFICER GEFTER:  Response time  
22                  is anticipated to be what?

23                  MARSHAL CASTLE:  To be about -- it will  
24                  be about 12 minutes with the new station.  The old  
25                  station was about 17.

1                   HEARING OFFICER GEFTER: I think that  
2 covers it. Does the staff have any questions?

3                   MR. RATLIFF: No.

4                   EXAMINATION - Resumed

5 BY HEARING OFFICER GEFTER:

6                   Q Before we finish socioeconomics, I also  
7 have a question about possible agreement that the  
8 applicant may have with the local school  
9 districts. I want to ask Mr Wehn about that.

10                  A The applicant has made contact with the  
11 Superintendent of schools and while we don't have  
12 a specific agreement to provide assistance, he has  
13 asked us to get together when school starts and  
14 things settle down. And we will talk to him about  
15 some form of support, support that they need, not  
16 what we will try to impose on them.

17                   And so while I can't give you a  
18 definitive answer on what we're going to do, but  
19 it's going to be kind of at the discretion of the  
20 Superintendent.

21                  Q Of which school district? Which area?

22                  A There's a gentleman --

23                  Q Is it in Bakersfield or is it in another  
24 town?

25                  A It's the school that is located closest

1 to our plant site, and forgive me for not knowing  
2 the exact name of it.

3 Q That's fine.

4 A But it's the local school.

5 Q At some point you can let us know the  
6 status of those negotiations.

7 A I sure can, yes.

8 Q Before the PMPD issues?

9 A Yes, I can do that.

10 HEARING OFFICER GEFTER: Thank you. Any  
11 questions from the intervenors on this topic?

12 MS. GRIFFIN: I have a question.

13 CROSS-EXAMINATION

14 BY MS. GRIFFIN:

15 Q Mr. Wehn, this is a copy of the  
16 development agreement between the County of Kern  
17 and Tejon Industrial Corporation. And it deals  
18 with the fire station at Laval, which will replace  
19 the one that's supposed to be closed down at  
20 Metler.

21 Did you provide the CEC with a copy of  
22 this?

23 A I believe that was included in our  
24 evaluation because we had to talk about anything  
25 that was on the record at the time that we filed

1       our application.

2           Q     Well, there was mention of this, but did  
3       you include this actual document?  Because it  
4       gives more -- that's my only copy --

5           MS. GRIFFIN:  I'll enter it in the  
6       record because it will give the CEC a much better  
7       idea of when and how this project is going to be  
8       developed.

9           HEARING OFFICER GEFTER:  Is this an EIR  
10      for the Tejon Industrial --

11          MS. GRIFFIN:  No.  It's the development  
12      agreement that came after the --

13          PRESIDING MEMBER LAURIE:  For what?

14          MS. GRIFFIN:  -- EIR was approved.

15          PRESIDING MEMBER LAURIE:  It's the  
16      development agreement for?

17          MS. GRIFFIN:  For the Tejon Industrial  
18      Complex.

19          PRESIDING MEMBER LAURIE:  Okay, and why  
20      is the development agreement for the Tejon  
21      Industrial Complex relevant to whether or not  
22      there is a socioeconomic impact from this  
23      facility?

24          MS. GRIFFIN:  A development agreement  
25      freezes rules, regulations and ordinance for ten



1 years out there --

2 PRESIDING MEMBER LAURIE: Well, it --

3 MS. GRIFFIN: -- in exchange there are  
4 some Tejon will get the land, but everything's  
5 conditioned on how fast the project builds up, how  
6 much sales tax they take in --

7 PRESIDING MEMBER LAURIE: Understood.

8 MS. GRIFFIN: That's why I thought the  
9 CEC might just want to leaf through that part of  
10 it to get a better idea of exactly when or if a  
11 fire department will ever be at that site that  
12 your documents say it will be.

13 HEARING OFFICER GEFTER: All right,  
14 well, first of all we can take administrative  
15 notice of that document. It's a public document,  
16 correct?

17 MS. GRIFFIN: Oh, yes.

18 HEARING OFFICER GEFTER: Yes.

19 PRESIDING MEMBER LAURIE: Yes.

20 HEARING OFFICER GEFTER: And secondly,  
21 Mr. Wehn has testified to the new fire station and  
22 the Fire Chief has indicated to us that they do  
23 intend to build that fire station.

24 MS. GRIFFIN: There's more detail in  
25 there.

1 HEARING OFFICER GEFTER: Okay, well,  
2 we'll take a look at that. Thank you very much.

3 Anything else on socioeconomics, Mr.  
4 Thompson?

5 MR. THOMPSON: One other thing. Exhibit  
6 43 is the letter from the Building Trades of Kern,  
7 Inyo and Mono Counties of California to the staff.  
8 I think that's been distributed. It seems like  
9 that may be the right time to move exhibit 43 into  
10 the record.

11 HEARING OFFICER GEFTER: I thought we  
12 did yesterday, but --

13 MR. THOMPSON: I may have missed that.  
14 If we didn't, I'd like to move it.

15 PRESIDING MEMBER LAURIE: Why don't we  
16 do it just as a backup. Any objections?

17 DR. UNGER: No.

18 MR. RATLIFF: No.

19 MS. GRIFFIN: No.

20 HEARING OFFICER GEFTER: Exhibit 43 is  
21 in the record.

22 MR. THOMPSON: Thank you. That's all we  
23 have on this area.

24 HEARING OFFICER GEFTER: Thank you. All  
25 right, we could also move on to worker safety,

1       because I think we may have covered all of the  
2       items on worker safety.

3               Do you have a different witness other  
4       than Mr. Wehn?

5               MR. THOMPSON: We have a public health  
6       witness that should be extremely short.

7               HEARING OFFICER GEFTER: Okay. Yeah,  
8       I'm sure, --

9               (Laughter.)

10              HEARING OFFICER GEFTER: -- but let's  
11       finish worker safety unless you have, --

12              MR. THOMPSON: Okay.

13              HEARING OFFICER GEFTER: -- because we  
14       actually -- Mr. Koehler, you can come and sit  
15       down. We're going to ask the applicant to do your  
16       worker safety issues right now, and then we'll do  
17       public health.

18              MR. THOMPSON: Applicant would like to  
19       call Ms. Denise Clendening. I would point out Ms.  
20       Denise Clendening is here for worker safety and  
21       fire protection, but she is also going to testify  
22       regarding Valley Fever, as that is a subject that  
23       seems to cross over a number of areas. Ms.  
24       Clendening has not been sworn.

25              Inasmuch as Mr. Koehler on public health

1       seems to be in the same area, can I swear them  
2       both at the same time?

3               HEARING OFFICER GEFTER:   Sounds like a  
4       good idea.

5               MR. THOMPSON:   Would you both rise and  
6       raise your right hand and be sworn.  
7       Whereupon,

8               DENISE CLENDENING and JOHN KOEHLER  
9       were called as witnesses herein and after first  
10      being duly sworn, were examined and testified as  
11      follows:

12              PRESIDING MEMBER LAURIE:   Mr. Thompson,  
13      don't feel overly pressured from the Committee.  
14      My concern of expression -- my expression of  
15      concern is over our process.   That is we have  
16      written documentation, and the Committee does not  
17      have a need to repeat any of that.

18              The parties have that and are free to  
19      ask questions in regards to that because the  
20      witnesses are present.   And, yet, our process  
21      historically ignores that.   And we spend a lot of  
22      time going over what's in the document, rather  
23      than just stipulating to the admission of the  
24      document.   And I find that unnecessary.   And we  
25      will be discussing that process in-house.

1                   So, to the extent that oral testimony is  
2                   necessary, please proceed. Otherwise, offer up a  
3                   stipulation.

4                   MR. THOMPSON: Thank you. The reason I  
5                   was going to have both of them is that the nexus  
6                   between public health and worker safety in this  
7                   area, and I thought it could be helpful is all.

8                   DIRECT EXAMINATION

9                   BY MR. THOMPSON:

10                  Q     Mr. Koehler, am I correct that your  
11                   prepared testimony is included in exhibit 38 to  
12                   this proceeding?

13                  A     Yes.

14                  Q     And you are here to sponsor a portion of  
15                   exhibit 1, which is applicant's AFC, notably  
16                   section 5.16, public health, is that correct?

17                  A     That's correct, yes.

18                  Q     And a summary of your procedures and how  
19                   you developed your analysis is contained in the  
20                   AFC and in your prepared testimony, is that  
21                   correct?

22                  A     A summary is contained in the exhibit,  
23                   yes.

24                  MR. THOMPSON: Thank you very much.

25                  //

1 DIRECT EXAMINATION

2 BY MR. THOMPSON:

3 Q With regard to worker safety and fire  
4 protection, Ms. Clendening, am I correct that your  
5 testimony is in exhibit 38 to this proceeding?

6 A Yes, that's correct.

7 Q And your testimony, you are going to be  
8 sponsoring, you wish to sponsor exhibit 1 section  
9 5.17 worker safety and fire protection, is that  
10 correct?

11 A That's correct.

12 Q In addition to the testimony that has  
13 already been put into the record, or will be put  
14 into the record, you are responsible for  
15 applicant's response to the questions regarding  
16 Valley Fever, is that correct?

17 A That's correct.

18 MR. THOMPSON: Thank you very much. I  
19 would offer John Koehler in public health and  
20 Denise Clendening in worker safety and fire  
21 protection.

22 PRESIDING MEMBER LAURIE: Thank you.

23 HEARING OFFICER GEFTER: Thank you.

24 Does staff have any questions of either witness?

25 MR. RATLIFF: No.

1 MS. GRIFFIN: I'll go first.

2 CROSS-EXAMINATION

3 BY MS. GRIFFIN:

4 Q Did either of you consult with the local  
5 mosquito abatement district?

6 MS. CLENDENING: I did not.

7 MR. KOEHLER: No.

8 MS. GRIFFIN: As you were looking at the  
9 problem of Valley Fever, did either of you consult  
10 with a microbiologist to develop this analysis  
11 that I received in the mail?

12 HEARING OFFICER GEFTER: You're  
13 referring to exhibit 38, the testimony of Ms.  
14 Clendening?

15 MS. GRIFFIN: Yes.

16 MS. CLENDENING: I consulted with the  
17 Kern County Health Department, the epidemiologist  
18 who is recording the information who was part of  
19 the task force, the Valley Fever task force.

20 MS. GRIFFIN: But no microbiologist  
21 actually went out and did testing on the site?

22 MS. CLENDENING: That's correct.

23 MS. GRIFFIN: So you contend that this  
24 project will not expose people any more than they  
25 ordinarily would have been in Kern County to

1 Valley Fever, is that the way I understand about  
2 the last sentence of question 5 and --

3 MS. CLENDENING: What I contend is that  
4 if, with our dust control methods, and if we have  
5 compliance with the San Joaquin Valley Unified Air  
6 Pollution Control District's rules, specifically  
7 8020 through 8070, to control fugitive dust, and  
8 Kern County's grading ordinance chapter 70 of the  
9 Uniform Building Code, it will reduce the  
10 potential to a level of insignificance.

11 MS. GRIFFIN: Okay. Mr. Chairman, I  
12 want to get a second opinion.

13 That's all I have, Ms. Gefter.

14 HEARING OFFICER GEFTER: Thank you. Dr.  
15 Unger, do you have questions?

16 DR. UNGER: Please.

17 CROSS-EXAMINATION

18 BY DR. UNGER:

19 Q The dust control, was that to control  
20 PM10 or was that devised to control  
21 coccidiomycosis?

22 A It's for PM10 and they have found that  
23 the fungus travels in the wind, and that dust  
24 control has been found to suppress the fungus in  
25 the air.



1           Q     So, cultivating, or disturbing  
2     uncultivated land, providing you do the PM10 dust  
3     control, does not subject one to a risk of  
4     catching Valley Fever?

5           A     I did not state that. But with proper  
6     dust control methods, it makes it insignificant  
7     level. That is the conclusion of the task force  
8     that was formed to specifically address these  
9     issues.

10          Q     Okay. Will you do skin tests before and  
11     after workers work on this project?

12          A     That has not been addressed. The County  
13     Health Department, they are willing to come out  
14     and discuss Valley Fever with the workers ahead of  
15     time. So, they have not recommended skin testing.

16          Q     Do you know what the County Health  
17     Department will tell the workers? Like certain  
18     ethnic groups have more risk than others, people  
19     who haven't been Valley residents have more risk  
20     than others?

21          A     I'm sure -- well, I can't speak for  
22     them, but I know that they are aware of the  
23     genetic factors of Valley Fever.

24                     DR. UNGER: That's it, thank you.

25                     PRESIDING MEMBER LAURIE: Thank you,

1 Dr. Unger.

2 HEARING OFFICER GEFTER: Thank you. Do  
3 you have any redirect of your witnesses?

4 MR. THOMPSON: We do not. Thank you.

5 HEARING OFFICER GEFTER: The witnesses  
6 may be excused on that topic. And we have noise  
7 as our last topic.

8 MR. THOMPSON: Could we go off the  
9 record for 30 seconds?

10 HEARING OFFICER GEFTER: Yes.

11 (Off the record.)

12 HEARING OFFICER GEFTER: Mr. Ratliff, do  
13 you have some changes in language on the testimony  
14 regarding conditions on public health?

15 MR. RATLIFF: The changes are not in the  
16 conditions, themselves, but in the reference to  
17 the conditions in Mr. Obed Odoemelam's testimony,  
18 supplemental testimony, dated September 8th on  
19 public health.

20 He refers to AQ-1 and AQ-3, and the  
21 proper reference should be AQC-1 and AQC-3.

22 HEARING OFFICER GEFTER: What about AQC-  
23 2, is that not part of that?

24 MS. LEWIS: It's 1 through 3.

25 HEARING OFFICER GEFTER: Thank you.

1 MR. RATLIFF: I'm sorry, through 3,  
2 yeah.

3 HEARING OFFICER GEFTER: Thank you.

4 MR. RATLIFF: AQC-1 through AQC-3 is the  
5 reference.

6 HEARING OFFICER GEFTER: And that's in  
7 exhibit 36 --

8 MR. RATLIFF: Yes.

9 HEARING OFFICER GEFTER: -- of public  
10 health supplemental testimony. All right, thank  
11 you.

12 Then we will go on to our next topic  
13 which is noise. Is the applicant ready?

14 MR. THOMPSON: We are. Applicant would  
15 like to call Rob Greene. Mr. Greene has not been  
16 sworn.

17 Whereupon,

18 ROBERT E. GREENE  
19 was called as a witness herein and after first  
20 being duly sworn, was examined and testified as  
21 follows:

22 DIRECT EXAMINATION

23 BY MR. THOMPSON:

24 Q Would you please state your name and  
25 place of employment for the record?

1           A     Yes, my name is Robert E. Greene; I'm a  
2     Principal Scientist with the URS Corporation; my  
3     CV is part of the record.

4           Q     And your prepared testimony appears in  
5     exhibit 38 to this proceeding. And in that  
6     testimony you are sponsoring exhibit 1, which is  
7     applicant's AFC, section 5.12, is that correct?

8           A     That's correct.

9           Q     In addition to that material, a question  
10    was asked regarding the 65 dba noise level in the  
11    presence of the quarry and the property boundary.  
12    I'm probably getting this question mixed up, but I  
13    hope I've given you enough information so you can  
14    summarize your testimony on that issue very  
15    briefly.

16          A     Okay, in addition to evaluating the  
17    entire project as the noise test manager, wherein  
18    I evaluated different noise levels and measured  
19    noise levels on the site and around the linear  
20    facilities, I'd like to clarify an answer to a  
21    question that the Committee had raised.

22                In that the facility, as proposed, would  
23    not cause an adverse noise effect on the adjacent  
24    sand and gravel mining operation, which is  
25    considered a noise insensitive use by the County

1 of Kern, although they do have some general  
2 recommendations for noise limits for adjacent  
3 industrial properties or noise insensitive uses.

4 And the reason that I believe that there  
5 will be no adverse effects are twofold. One,  
6 during the nighttime hours the mining operations  
7 cease. There are no persons on that site on the  
8 property adjacent to the proposed plant, therefore  
9 no potential for adverse effects.

10 And during the daytime operations of the  
11 plant the mining operations and the plant, the  
12 mining operations create a substantial amount of  
13 noise, as you might imagine, with large machinery  
14 and trucks, such that the operators of the plant  
15 have their workers with personal hearing  
16 protection, ear muffs or plugs, and the  
17 administrative staff is located inside noise  
18 attenuated trailer buildings.

19 Again, any noise from the PEF facility  
20 would be inaudible on the adjacent property.

21 In addition to the fact that they are  
22 protected or not on the site, the staff-  
23 recommended noise condition 2 offers an avenue for  
24 any complaint resolution should that come up in  
25 the future.

1                   So we believe that with those  
2           regulations in place, that the project does comply  
3           with all the applicable regulations and laws. And  
4           that it would have no significant adverse noise  
5           impact to the environment as it is proposed and  
6           designed.

7           Q     Thank you, Mr. Greene.

8                   MR. THOMPSON: Mr. Greene is tendered  
9           for cross-examination in the area of noise.

10                   HEARING OFFICER GEFTER: Thank you.

11                               EXAMINATION

12           BY HEARING OFFICER GEFTER:

13           Q     With respect to condition noise-1, which  
14           is proposed by staff, applicant is supposed to  
15           notify businesses and residents within one-half  
16           mile of the site.

17                   However, the residential receptors were  
18           four miles to five miles away.

19           A     That's correct.

20           Q     Would those individuals be notified,  
21           particularly with respect to the steam blow?

22           A     We have discussed methodologies for  
23           doing that, and we believe that we can address  
24           both of those simultaneously by posting signage at  
25           and near the site for persons that are in the

1 vicinity.

2 And the second methodology is something  
3 we would certainly be open to discussions, but the  
4 thought would be that publication in the local  
5 newspaper would be a good way to do that. Public  
6 service announcements, if necessary, on local  
7 radio stations should serve to do that.

8 As you raised the point, especially with  
9 steam blows, there's an additional condition that  
10 we notify persons that that is a normal occurrence  
11 associated with power plants. It's very short  
12 term in duration, and would not be something  
13 permanent.

14 Q Okay. And your plan for notification  
15 would be sent to the CPM prior to --

16 A That's correct, --

17 Q -- the time that those noises would  
18 occur? All right, okay.

19 HEARING OFFICER GEFTER: Any cross-  
20 examination from staff?

21 MR. RATLIFF: No.

22 DR. UNGER: No.

23 HEARING OFFICER GEFTER: Okay, the  
24 witness may be excused.

25 MR. THOMPSON: Thank you, Mr. Greene.

1 MR. GREENE: Thank you.

2 MR. THOMPSON: I believe that that is it  
3 for our areas. We do have a number of wrap-up  
4 areas with Mr. Wehn when the Committee would like  
5 for us to proceed with that.

6 HEARING OFFICER GEFTER: First of all I  
7 wanted to ask staff about whether they want to  
8 move the PSA, the FSA and the supplemental  
9 testimony into the record.

10 MR. RATLIFF: We do, yes, we so move.

11 HEARING OFFICER GEFTER: Okay, the PSA  
12 is exhibit 31; the FSA is 35; and the supplemental  
13 testimony is 36.

14 Any objections to those documents being  
15 moved into the record?

16 DR. UNGER: No.

17 MR. THOMPSON: No.

18 HEARING OFFICER GEFTER: They are now  
19 moved into the record.

20 Mr. Thompson.

21 MR. THOMPSON: Did someone move exhibit  
22 37, which is the ISO letter?

23 HEARING OFFICER GEFTER: Yes.

24 MR. RATLIFF: Was that not included? If  
25 it was --



1 HEARING OFFICER GEFTER: Yes, staff --

2 MR. RATLIFF: I thought you had  
3 mentioned that, but, okay.

4 MR. THOMPSON: Okay, I missed it.

5 HEARING OFFICER GEFTER: It was admitted  
6 into the record yesterday as far as I know. As  
7 far as I remember.

8 There were additional items where we  
9 were pending some documentation from the  
10 applicant. In addition, applicant, you may want  
11 to take this time to move exhibits 1 and 38 into  
12 the record.

13 MR. THOMPSON: Yes, I actually have  
14 three or four items if I may. I would like to  
15 move exhibits 1 and 38; 1 is the AFC, 38 is the  
16 prepared testimony, into the record.

17 HEARING OFFICER GEFTER: Any objections?

18 MR. RATLIFF: No.

19 DR. UNGER: No.

20 HEARING OFFICER GEFTER: Exhibits 1 and  
21 38 are now moved into the record.

22 MR. THOMPSON: If I could recall Mr.  
23 Wehn. Mr. Wehn remains under oath.

24 //

25 //

1 DIRECT EXAMINATION

2 BY MR. THOMPSON:

3 Q At the close of yesterday's hearing, Mr.  
4 Wehn, the question was asked regarding contracts  
5 with Southern California Edison and the  
6 Independent System Operator, the ISO. Have you  
7 been able to obtain any information on that?

8 A Yes, I have.

9 Q Would you please go forward?

10 A I talked to Southern Cal Edison  
11 yesterday and they defined these two agreements  
12 that are in question in this manner: That we will  
13 be signing a participation generator agreement  
14 with the Independent System Operator.

15 That agreement will set forth the terms  
16 and conditions for scheduling of power into the  
17 grid.

18 With regard to the Southern Cal Edison,  
19 there's a term called a -- that we've been calling  
20 a generator special facilities agreement that I  
21 was advised has now been renamed to a service  
22 agreement for interconnection facilities.

23 And what that will contain are the  
24 operational characteristics or requirements that  
25 we will have with respect to the transmission

1 interconnection. It will contain the facilities  
2 required for us to interconnect such as if there  
3 are breakers and transformers or whatever that  
4 would have to be supplied. It would also contain  
5 the cost of those facilities that we would be  
6 funding.

7 And then last is the remedial action  
8 scheme that will be described in great detail with  
9 regard to our requirements to Southern Cal Edison.

10 EXAMINATION

11 BY HEARING OFFICER GEFTER:

12 Q Well, with respect to that change in  
13 name of the document, TSE condition 1H then needs  
14 to be revised to conform to the name of the  
15 document, as well as what the document contains.  
16 I would like to see some revision of the language  
17 from the applicant and staff, stipulated language  
18 that you could submit to us.

19 A We'd be glad to work with staff and  
20 provide that.

21 MR. RATLIFF: Sure.

22 HEARING OFFICER GEFTER: Okay, thank  
23 you.

24 MR. THOMPSON: Ms. Gefter, if I may, I  
25 believe that that closes out transmission system

1       engineering, and I would like to offer exhibits 4  
2       and 5 into the record. Four is the Southern  
3       California Edison single line; and 5 is the system  
4       impact study.

5               HEARING OFFICER GEFTER: Any objection?

6               DR. UNGER: No.

7               HEARING OFFICER GEFTER: Okay, exhibits  
8       4 and 5 are now admitted into the record.

9               I believe all the exhibits that we have  
10       identified and talked about during evidentiary  
11       hearings have now been admitted into the record.

12               Anything further from any of the  
13       parties?

14               MR. THOMPSON: I do have a couple items,  
15       if I may.

16               DIRECT EXAMINATION

17       BY MR. THOMPSON:

18               Q     Mr. Wehn, toward the close of  
19       yesterday's proceeding the Committee, in the  
20       visual area, asked about the possibility of  
21       screening the power plant from viewsheds along  
22       highway I-5.

23               We committed to taking a look at that  
24       last night. Does applicant have a proposal to put  
25       into the record. And if you do have, would you

1 please read it into the record?

2 A I would like to offer, as the applicant,  
3 a condition and a verification that we would be  
4 willing to live to, and that is applicant shall  
5 submit for review to the Staff CPM a project  
6 screening plan.

7 The plan shall include all the relevant  
8 parameters necessary to screen the facility. And  
9 will include the landowner's responsibility for  
10 future maintenance of the screening vegetation.

11 And the verification of that would be  
12 within 60 days prior to the start-up of project  
13 construction the applicant shall submit the  
14 project screening plan to the CPM. The submitted  
15 plan shall include evidence that the plan is  
16 acceptable to the owners of the land where the  
17 plantings will be placed.

18 PRESIDING MEMBER LAURIE: I would  
19 suggest that you include the verbiage of screening  
20 from the view of highway 5 travelers, because  
21 that's not clear.

22 I would also not mind if you use the  
23 term reasonable screening, because it is possible  
24 that one may catch a glimpse.

25 Commissioner Moore, did you want to talk

1       about any greater specificity, basically a plan  
2       would be prepared for submission to the project  
3       manager. If there's disagreement, of course, it  
4       would come back to the Commission.

5               COMMISSIONER MOORE: No.

6               PRESIDING MEMBER LAURIE: Thank you.

7               MR. THOMPSON: Thank you very much.

8               HEARING OFFICER GEFTER: I would again  
9       request that language be submitted to the  
10      Committee; check with staff on language agreement.  
11      And as with the submission of the language for TSE  
12      condition 1H, submit this language as well, and  
13      serve it on all the parties.

14              MR. THOMPSON: I would like to recall  
15      Ms. Scholl, as well.

16              DIRECT EXAMINATION

17      BY MR. THOMPSON:

18              Q     Ms. Scholl, yesterday during the  
19      proceedings Ms. Dee Dominguez requested some  
20      changes in the text of the cultural resources  
21      section, and I think reference was made not only  
22      to the AFC, but the staff's final staff  
23      assessment, as well.

24              Would you please describe or discuss  
25      with us meetings that you had and our proposal,

1 your proposal for going forward on that issue?

2 A Yes. Following the close of the  
3 hearing, or during the hearing you requested that  
4 we try and work with Dee Dominguez to come up with  
5 some revised FSA language that would be acceptable  
6 to Ms. Dominguez.

7 We met with Ms. Dominguez, along with my  
8 cultural resources technical people after the  
9 hearing yesterday. And Ms. Dominguez was not  
10 prepared to forward to us revised language.

11 I have spoken with CEC attorney and our  
12 proposal would be to work with her later this week  
13 or early next week to submit that revised language  
14 that would be acceptable to all parties.

15 HEARING OFFICER GEFTER: That would be  
16 fine. When you submit it again serve it on  
17 everybody.

18 MS. SCHOLL: Okay.

19 HEARING OFFICER GEFTER: All the parties  
20 on the proof of service list. Thank you.

21 PRESIDING MEMBER LAURIE: Wait a minute.  
22 Be more specific about agreed language as to what  
23 exactly?

24 MS. SCHOLL: Ms. Dominguez had specific  
25 questions with the natural history ethnography

1 section of the FSA. And would like to provide  
2 some changes to the FSA language to address her  
3 concerns about its correctness.

4 PRESIDING MEMBER LAURIE: Okay, well,  
5 the FSA is a staff report.

6 MS. SCHOLL: Um-hum.

7 PRESIDING MEMBER LAURIE: The FSA is not  
8 relevant to any final outcome, except as  
9 expressing the view of the staff. If anybody is  
10 concerned about specific language it would be the  
11 specific language as it may be reflected in the  
12 Commission's decision.

13 So why do we have to agree on language  
14 in the FSA? If a party or member of the public  
15 disagrees with elements of the FSA, then that  
16 party submits something in writing as to the  
17 extent of their disagreement. And it shows up in  
18 the record.

19 I don't think we compromise on the  
20 language of the FSA. What am I missing?

21 If Ms. Dominguez objects to language in  
22 the FSA, then she writes a letter saying I  
23 disagree with the language in the FSA, and this is  
24 what I think.

25 And then it's up to the Commission as to



1       what to say about it.  Where am I wrong, Ms.  
2       Mendonca?

3               MS. MENDONCA:  I'm not saying that  
4       you're wrong, but yesterday when Ms. Dominguez  
5       left she was given the direction that she was to  
6       reach a stipulation with the applicant about the  
7       changes.  And that that stipulation was going to  
8       be presented today for this hearing.

9               PRESIDING MEMBER LAURIE:  Okay, well,  
10      that --

11              MS. MENDONCA:  They did not reach that  
12      agreement, and that is what they are now proposing  
13      to do, is to continue the discussion so that that  
14      stipulation can be agreed to.

15              PRESIDING MEMBER LAURIE:  Well, if you  
16      want to submit a proposal -- if the parties want  
17      to submit to a proposal, and staff wants to ask  
18      that the FSA be amended, well, the Committee will  
19      consider it.

20              But simply because the FSA isn't amended  
21      doesn't mean that the Committee's going to ignore  
22      any written submittal by any party.

23              MS. MENDONCA:  I don't believe the basis  
24      of the stipulation was that the FSA be amended.  
25      The basis of the stipulation was to provide the

1 correction for this tribunal, for this hearing, to  
2 the record so that the record --

3 PRESIDING MEMBER LAURIE: Okay, well,  
4 then that's different than amending the language  
5 in the FSA.

6 MS. MENDONCA: Correct.

7 PRESIDING MEMBER LAURIE: Well, great.  
8 If the parties can reach some agreement as to a  
9 true set of facts, and want to sign off on that,  
10 fine. And we'll give you some time to do that.

11 Absent that, she's free to submit it on  
12 her own.

13 MS. MENDONCA: I believe that was the  
14 understanding that she was operating on yesterday,  
15 and so we kind of got bypassed and hung up on the  
16 FSA. That's where the problem arose, but the  
17 solution is in a separate document, by  
18 stipulation, that would correct what she perceived  
19 mutually agreed to language to correct that.

20 PRESIDING MEMBER LAURIE: Okay, that's  
21 fine. Thank you.

22 MR. THOMPSON: We are concerned that any  
23 delay could come out of this. And we would be  
24 loathe to accept a proposal for negotiation that  
25 would cause any delay in the issuance of the PMPD.

1 And I don't think it would, but for the record Ms.  
2 Dominguez received two letters from the applicant  
3 13 months ago about the project. And signed  
4 return receipt requested for them.

5 So there was knowledge of the project  
6 dating back for over a year.

7 HEARING OFFICER GEFTER: Thank you.

8 MS. GRIFFIN: Ms. Gefter, I think -- I  
9 wish the Commission -- Mary Griffin for Kern  
10 Audubon. I hope the Commission reviews her  
11 testimony. I believe she had concerns about her  
12 tribal recognition. Was the reason she was here.

13 PRESIDING MEMBER LAURIE: That's fine,  
14 thank you.

15 HEARING OFFICER GEFTER: Anything else,  
16 Mr. Thompson?

17 MR. THOMPSON: Well, I'm wondering if it  
18 would be appropriate to ask for an exhibit number  
19 for a late-filed exhibit for the Williamson Act,  
20 which is going on this afternoon.

21 And when that final document is signed  
22 and we can make copies, which I hope would be  
23 today or tomorrow, if you give me an exhibit  
24 number we can close it off and I can just submit  
25 with a number on it.

1                   HEARING OFFICER GEFTER: Also, you had  
2 distributed a letter from the Planning Department  
3 dated September 18th regarding a zone variance.  
4 Is that another item you would like to identify  
5 for the record?

6                   MR. THOMPSON: Yes. This is what I  
7 believe to be is the final signed-off copy of the  
8 parcel map approval dated September 18th and  
9 signed by Mr. James E. Ellis.

10                  HEARING OFFICER GEFTER: Let's mark that  
11 as exhibit 58. And the final decision by the  
12 County Board of Supervisors regarding the  
13 Williamson Act cancellation will be exhibit 59.

14                  MR. THOMPSON: Thank you.

15                  HEARING OFFICER GEFTER: And you will  
16 submit that to the record.

17                  We can't actually admit it until we see  
18 it, Mr. Thompson. So once you submit it to us  
19 we'll indicate in the PMPD that it was admitted  
20 into the record. As long as there's no objection  
21 and everyone has a chance to look at it.

22                  Is there any objection to exhibit 58  
23 being admitted into the record?

24                  DR. UNGER: No.

25                  HEARING OFFICER GEFTER: Nothing from

1 staff?

2 MR. RATLIFF: No.

3 HEARING OFFICER GEFTER: Nothing from  
4 the intervenors, all right. Exhibit 58 is now  
5 admitted into the record.

6 Anything else?

7 MR. THOMPSON: I think that's it from  
8 applicant's standpoint.

9 PRESIDING MEMBER LAURIE: Can we get a  
10 representation regarding acceptance of conditions?

11 MR. THOMPSON: Thank you very much, that  
12 wasn't it. Mr. Wehn, who has been previously  
13 sworn.

14 DIRECT EXAMINATION

15 BY MR. THOMPSON:

16 Q Mr. Wehn you have had a chance to review  
17 the conditions of certification and the  
18 verification thereto, as amended, that appear in  
19 the staff final staff assessment, as amended by a  
20 certain number of changes that have occurred in  
21 the last two days.

22 On behalf of the Pastoria Energy  
23 Facility do you and does the project accept those  
24 conditions of certification and verification?

25 A As the applicant, yes, I accept those

1 conditions of certification and the verifications.

2 MR. THOMPSON: Thank you.

3 HEARING OFFICER GEFTER: Does staff have  
4 anything further?

5 MR. RATLIFF: No.

6 HEARING OFFICER GEFTER: Intervenors?

7 DR. UNGER: No.

8 MS. GRIFFIN: No.

9 PRESIDING MEMBER LAURIE: Let's ask for  
10 any final public comment.

11 HEARING OFFICER GEFTER: Is there any  
12 member of the public who would like to come  
13 forward and make comment?

14 PRESIDING MEMBER LAURIE: Ms. Gefter, at  
15 this time I would ask you to briefly summarize  
16 what the next steps are so all parties in the room  
17 can anticipate what will occur over the next 30,  
18 60 days or so.

19 DR. UNGER: Commissioner Laurie, can I  
20 comment briefly as a member of the public?

21 PRESIDING MEMBER LAURIE: Yes, sir.

22 DR. UNGER: I guess we're just about  
23 done. Firstly, I want to thank the applicant for  
24 feeding us so well, and I enjoyed the proceedings.  
25 I enjoyed all the people at the table.

1           I think that as business people and  
2       engineers, the applicant should be proud that  
3       they're presenting us with the most energy with  
4       the least pollution as possible.

5           As Californians, as Americans, and as  
6       just people on this small planet, I implore  
7       everyone, especially the applicant, to tell the  
8       people in public or in their private life, that if  
9       we would all conserve energy we wouldn't need  
10      these polluting plants.

11          I hope that the record will show that  
12      the plant consumes water; that the plant emits  
13      salt; and that the plant does pollute the air,  
14      whether they have ERCs or not.

15          Thank you.

16          PRESIDING MEMBER LAURIE: Ms. Griffin,  
17      did you wish to offer any closing comment?

18          MS. GRIFFIN: Well, I'd like to thank  
19      you for coming down here on two such hot days.  
20      But it always heats up for the fair, which will  
21      start tomorrow.

22          And I spoke to the Fire Marshal Castle  
23      outside and he said with all these energy plants  
24      going in in Kern County he sure was glad to see  
25      you guys, too.

1                   So, come back.

2                   PRESIDING MEMBER LAURIE: The Committee  
3 would like to acknowledge and thank the members of  
4 the public and the public intervenors for the very  
5 professional and cooperative manner in which you  
6 all have participated in our proceedings. It was  
7 very well done. I thank you for that.

8                   And that goes to the applicants and  
9 staff, as well.

10                  Ms. Gefter.

11                  HEARING OFFICER GEFTER: The next step  
12 is the publication of a Presiding Member's  
13 Proposed Decision in which we review all of the  
14 evidence, including all the documents that have  
15 been filed, and the testimony that we've heard  
16 over the last two days.

17                  This is a large document, and it will  
18 take some time for the Committee to publish it,  
19 but it will be served on everyone. You'll have a  
20 chance to look at it. There's a 30-day comment  
21 period. We would set a deadline for the receipt  
22 of written comments. We will also have a public  
23 conference, a hearing on comments on the PMPD, as  
24 we call it.

25                  If, at the conclusion of the 30-day



1 comment period there are no substantial issues  
2 that are raised, then the Presiding Member's  
3 Proposed Decision or PMPD will then go to the full  
4 Commission for review, and a final vote on the  
5 applicant's request for certification for its  
6 project.

7 After the Commission votes on the  
8 project, and if it votes to certify the project,  
9 there's a 30-day reconsideration period in which  
10 the parties, only, may file written comments and  
11 request that the Commission reconsider its  
12 decision.

13 At the end of those 30 days the decision  
14 is final.

15 Dr. Unger.

16 DR. UNGER: Thank you, Ms. Gefter. One  
17 more remark. I do hope that the State of  
18 California eventually has copy machines that only  
19 copy on two sides of the page. As an  
20 environmentalist, I'm chagrined at the paper we've  
21 used. I would hope that my copy of the Presiding  
22 Commissioners' Proposed Decision will come on  
23 email, as did the FSA. And I congratulate staff  
24 for putting some of it on email.

25 HEARING OFFICER GEFTER: The PMPD will

1 be on the Commission's website. And if you wish,  
2 we can have it sent to you by email, as well.

3 DR. UNGER: Well, if I'm just notified  
4 to open up the web and look that would do it.

5 HEARING OFFICER GEFTER: All right.

6 PRESIDING MEMBER LAURIE: Clarification.  
7 Is it everybody's understanding that the  
8 evidentiary record is closed, or is the  
9 evidentiary record open for some specified  
10 purposes? And if so, what are those specified  
11 purposes? Ms. Gefter.

12 HEARING OFFICER GEFTER: There are only  
13 the items that we discussed, additional language  
14 for TSE condition 1H, revision of the language; a  
15 new condition in visual resources regarding  
16 reasonable screening; new language, stipulated  
17 language regarding cultural resources that Ms.  
18 Dominguez would supply; and exhibit 59, which goes  
19 to the cancellation of the Williamson Act, that  
20 would be the final decision from the board of  
21 supervisors.

22 And any documentation from the biology  
23 agencies, U.S. Fish and Wildlife Service,  
24 regarding the biological opinion. And any other,  
25 the section 404 permit.

1                   And those official documents we will  
2           still accept into the record. Other than that,  
3           the record would be closed.

4                   PRESIDING MEMBER LAURIE: Okay.  
5           Anything else to come before this Committee? Sir?

6                   MR. WEHN: I'd just like to take this  
7           moment and thank the Commission Staff. I really  
8           appreciate the work that you all have done. I  
9           think you've worked very hard to analyze our  
10          project. And I thought it was a good exchange  
11          throughout the entire process.

12                   So my hat goes off to you, thank you for  
13          your efforts, and it's really appreciated.

14                   I'll thank the Committee, if I may,  
15          after they get the decision.

16                   (Laughter.)

17                   PRESIDING MEMBER LAURIE: You may want  
18          to wait awhile.

19                   (Laughter.)

20                   PRESIDING MEMBER LAURIE: If there's no  
21          other business to come before this Committee, the  
22          meeting stands adjourned. Thank you very much.

23                   (Whereupon, at 2:40 p.m., the hearing  
24          was adjourned.)

25                   --o0o--

## CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
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I further certify that I am not of  
counsel or attorney for any of the parties to said  
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of said Hearing.

IN WITNESS WHEREOF, I have hereunto set  
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